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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 165

NORMAN H. BUCK AND MIGUEL R. GUERRA,
APPELLANTS,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPERIOR COURT IN AND FOR THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

FILED JULY 2, 1951.

PROBABLE JURISDICTION NOTED OCTOBER 8, 1951.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE JUSTICE COURT OF NATIONAL TOWNSHIP, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

No. 2090

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

LOUIS C. YOUNGREN, Defendant

DOCKET ENTRIES

6/3/50—Bail for appearance deposited in the sum of $100.00(80) Bond.

Date 1950

June 5th. Complaint filed—Warrant issued.

June 8th. The defendant being now in open court is advised of his right to counsel and of his right to time in which to plead. Whereupon defendant waives time to plead and pleads not guilty to the within offense and demands trial by jury. Time for trial not waived. The Defendant consents that his trial be consolidated for trial with that of [fol. 2] Miguel R. Guerra and Norman H. Buck. Trial by jury set for June 26th, 1950.

June 26th. The defendant, by his counsel waives trial by jury and waives time for trial. It is stipulated between Harold Curtis, Deputy Dist. Attorney, on behalf of the People and Manuel Ruiz, counsel for defendant that the cause be submitted on an agreed statement of fact and written argument. Cause continued for the purpose of filing written briefs, by stipulation.

Sept. 13. Continued to Sept. 18, 1950 at 9 A. M.

Sept. 18. A stipulation of facts and written briefs of the people and the defendant having been filed and duly considered, the defendant being now before the court represented by his counsel, Manuel Ruiz, and the People being represented by Duane Carnes, Deputy District Attorney, and the issue having been duly considered by the Court, he is held guilty as charged in the complaint. The Defendant moves for arrest of Judgment on the following grounds:

[fol. 3] 1. The complaint does not charge the defendant with a public offense.

2. The evidence does not charge the defendant with a public offense.

3. There is no power given by public law wherein the Court has jurisdiction to enter the judgment.

Motion for arrest of judgment denied. Defendant waives time for pronouncement of sentence.

Wherefore It Is Ordered and Adjudged that the defendant pay a fine of $250.00 or serve one day in the County Jail of San Diego County for each $5.00 of the time not paid. $200.00 of said fine is suspended for two years on condition the defendant does not violate the ordinance which he is herein found violating. Execution of judgment is stayed by stipulation until the issues raised herein are decided in the appellate court, subject to the condition that the defendant at no time while this case is pending on appeal operate a taxicab in the unincorporated section of the County of San Diego without having a license from the Sheriff of San Diego County so to do.

[fol. 3a] Sept. 22. Notice of Appeal filed.

Sept. 26. On application the time in which to file statement on appeal is extended to Oct. 7, 1950.

Sept. 29. Statement on appeal filed.

I hereby certify that the foregoing is a transcript of the Docket in the above entitled cause in the above entitled court.

Dated Oct. 6, 1950.

(S.) Lowell Howe, Justice of the Peace of National Township.

[fol. 4] IN THE JUSTICE COURT OF NATIONAL TOWNSHIP

No. 2091

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MIGUEL R. GUERRA, Defendant

DOCKET ENTRIES

6/3/50—Bail for appearance deposited in the sum of $100.00(80) Bond.

Date 1950

June 5th. Complaint filed—Warrant issued.

June 8th—The defendant being now in open court is advised of his right to counsel and of his right to time in which to plead. Whereupon defendant waives time to plead and pleads not guilty to the within offense and demands trial by jury. Time for trial not waived. The Defendant consents that his trial be consolidated for trial with that [fol. 5] of Louis C. Youngren and Norman H. Buck. Trial by jury set for June 26th, 1950.

June 26th. The defendant, by his counsel waives trial by jury and waives time for trial. It is stipulated between Harold Curtis, Deputy Dist. Attorney, on behalf of the People and Manuel Ruiz, counsel for defendant that the cause be submitted on an agreed statement of fact and written argument. Cause continued for the purpose of filing written briefs, by stipulation.

Sept. 13. Continued to Sept. 18, 1950 at 9 A. M.

Sept. 18. A stipulation of facts and written briefs of the people and the defendant having been filed and duly considered, the defendant being now before the court represented by his counsel, Manuel Ruiz, and the People being represented by Duane Carnes, Deputy District Attorney, and the issue having been duly considered by the Court, he is held guilty as charged in the complaint. The Defendant moves for arrest of Judgment on the following grounds:

1. The complaint does not charge the defendant with a public offense.

[fol. 6] 2. The evidence does not charge the defendant with a public offense.

3. There is no power given by public law wherein the Court has jurisdiction to enter the judgment.

Motion for arrest of judgment denied. Defendant waives time for pronouncement of sentence.

Wherefore It Is Ordered and Adjudged that the defendant pay a fine of $250.00 or serve one day in the County Jail of San Diego County for each $5.00 of the fine not paid. $200.00 of said fine is suspended for two years on condition the defendant does not violate the ordinance which he is herein found violating. Execution of judgment is stayed by stipulation until the issues raised herein are decided in the appellate court, subject to the condition that the defendant at no time while this case is pending on appeal operate a taxicab in the unincorporated section of the County of San Diego without having a license from the Sheriff of San Diego County so to do.

Sept. 22. Notice of Appeal filed.

Sept. 26. On application the time in which to file state-
[fol. 7] ment on appeal is extended to Oct. 7, 1950.

Sept. 29. Statement on appeal filed.

I hereby certify that the foregoing is a trnscript of the Docket in the above entitled cause in the above entitled court.

Dated Oct. 6, 1950.

(S.) Lowell Howe, Justice of the Peace of National Township.

[fol. 8] IN THE JUSTICE COURT OF NATIONAL TOWNSHIP

No. 2092

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff

vs.

NORMAN H. BUCK, Defendant

DOCKET ENTRIES

6/3/50—Bail for appearance deposited in the sum of $100.00 (80) Bond.

Date 1950

June 5th. Complaint filed—Warrant issued.

June 8th. The defendant being now in open court is advised of his right to counsel and of his right to time in which to plead. Whereupon defendant waives time to plead and pleads not guilty to the within offense and demands trial by jury.

Time for trial not waived.

The Defendant consents that his trial be consolidated for [fol. 9] trial with that of Miguel R. Guerra and Louis C. Youngren.

Trial by jury set for June 26th, 1950.

June 26th. The defendant, by his counsel waives trial by jury and waives time for trial.

It is stipulated between Harold Curtis, Deputy Dist. Attorney, on behalf of the People and Manuel Ruiz, counsel for defendant that the cause be submitted on an agreed statement of fact and written argument.

Cause continued for the purpose of filing written briefs by stipulation.

Sept. 13. Continued to Sept. 18, 1950 at 9 A.M.

Sept. 18. A stipulation of facts and written briefs of the people and the defendant having been filed and duly considered, the defendant being now before the court represented by his counsel, Manuel Ruiz, and the People being represented by Duane Carnes, Deputy District Attorney, and the issue having been duly considered by the Court, he is held guilty as charged in the complaint.

The Defendant moves for arrest of Judgment on the following grounds:

1. The complaint does not charge the defendant with a public offense.

[fol. 10] 2. The evidence does not charge the defendant with a public offense.

3. There is no power given by public law wherein the Court has jurisdiction to enter the judgment.

Motion for arrest of judgment denied.

Defendant waives time for pronouncement of sentence.

Wherefore it is ordered and adjudged that the defendant pay a fine of $250.00 or serve one day in the County Jail of San Diego County for each $5.00 of the time not paid. $200.00 of said fine is suspended for two years on condition the defendant does not violate the ordinance which he is herein found violating.

Execution of judgment is stayed by stipulation until the issues raised herein are decided in the appellate court, subject to the condition that the defendant at no time while this case is pending on appeal operate a taxicab in the unincorporated section of the County of San Diego without having a license from the Sheriff of San Diego County so to do.

Sept. 22. Notice of Appeal filed.

Sept. 26. On application the time in which to file state-
[fol. 11] ment on appeal is extended to Oct. 7, 1950.

Sept. 29. Statement on appeal filed.

I hereby certify that the foregoing is a transcript of the Docket in the above entitled cause in the above entitled court.

Dated Oct. 6, 1950.

(S.) Lowell Howe, Justice of the Peace of National Township.

[fol. 12] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

Docket No. 2090

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

LOUIS C. YOUNGREN

COMPLAINT—CRIMINAL (MISDEMEANOR)—Filed October 6, 1950

Personally appeared before me this 5th day of June, 1950 Lester Henneuse, of Sheriff's Office, in the County of San Diego, State of California, who, being first duly sworn, complains and says that the crime of violation of County Ordinance No. 958 (New Series) amending Section 9 of County Ordinance 464 (New Series), as amended by Ordinance No. 609 (New Series) has been committed by said defendant as follows: That said Louis C. Youngren on or about the 4th day of June, 1950, in National Township, in said County of San Diego, State of California, and before the making or filing of this Complaint, did wilfully and unlawfully drive and operate a taxicab, to-wit, 1948 Ford Sedan; License #BEPP 1181, in the unincorporated area of the County [fol. 13] of San Diego, to-wit, at Orange & National Avenue, Harborside, without first having obtained a written permit from the Sheriff of San Diego County authorizing said defendant so to do;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealth with according to law.

(S.) Lester Henneuse.

Subscribed and sworn to before me this 5th day of June, 1950. (S.) Lowell Howe, Justice of the Peace of National Township, County of San Diego, State of California.

[File endorsement omitted.]

[fol. 14] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

Docket No. 2091

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff

vs.

MIGUEL GUERRA, Defendant

COMPLAINT—CRIMINAL (MISDEMEANOR)—Filed October 6, 1950

Personally appeared before me this 5th day of June, 1950 Lester Henneuse, of Sheriff's Office, in the County of San Diego, State of California, who, being first duly sworn, complains and says that the crime of violation of County Ordinance No. 958 (New Series) amending Section 9 of County Ordinance 464 (New Series) as amended by Ordinance No. 609 (New Series) has been committed by said defendant as follows: That said Miguel Guerra on or about the 3rd day of June, 1950, in National Township, in the said County of San Diego, State of California, and before the making or filing of this Complaint, did wilfully and unlawfully drive and operate a taxicab, to-wit, 1950 Ford Sedan, Commercial License # 1199, in the unincorporated area of the County of San Diego, to-wit, on U. S. #101, in San Ysidro, without first having obtained a written permit from the Sheriff of [fol. 15] San Diego County authorizing said defendant so to do;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

(S.) Lester Henneuse

Subscribed and sworn to before me this 5th day of June, 1950. (S.) Lowell Howe, Justice of the Peace of National Township, County of San Diego, State of California.

[File endorsement omitted.]

[fol. 16] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

Docket No. 2092

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff

vs.

NORMAN H. BUCK, Defendant

COMPLAINT—CRIMINAL (MISDEMEANOR)—Filed October 6, 1950

Personally appeared before me this 5th day of June, 1950, Lester Henneuse, of Sheriff's Office, in the County of San Diego, State of California, who, being first duly sworn, complains and says that the crime of violation of County Ordinance No. 958 (New Series) amending Section 9 of County Ordinance 464 (New Series), as amended by Ordinance No. 609 (New Series) has been committed by said defendant as follows: That said Norman H. Buck on or about the 4th day of June, 1950, in National Township, in the said County of San Diego, State of California, and before the making or filing of this Complaint, did wilfully and unlawfully drive and operate a taxicab, to-wit, a 1946 DeSoto Limousine, Engine #S11-9512, in the unincorporated area of the County of San Diego, to-wit, on Napels Street, in Harborside, without first having obtained a written permit from the Sheriff of San Diego County author-
[fol. 17] izing said defendant so to do;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

(S.) Lester Henneuse.

Subscribed and sworn to before me this 5th day of June, 1950. (S.) Lowell Howe, Justice of the Peace of National Township, County of San Diego, State of California.

[File endorsement omitted.]

[fol. 18] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

Docket No. 2092

Docket No. 2091

Docket No. 2090

[Title omitted]

STIPULATED FACTS—Filed October 6, 1950

For purposes of this stipulation, we may assume the following to be the facts:

I

That on or about the 31st day of October, 1949, one Harry [fol. 19] M. Rocco, agent of Bert Strand, Sheriff of the County of San Diego, California, filed a criminal complaint against one Norman H. Buck and one Miguel R. Guerra in the Justice's Court of National Township, County of San Diego, State of California, copy of which is annexed hereto, marked Exhibit "A".

II

That Norman H. Buck and Miguel R. Guerra are natural born citizens of the United States and had been prior thereto engaged in the taxicab business both within the unincorporated territory of the County of San Diego, as well as in foreign commerce, wherein they transported passengers for hire from the Federal Zone within the Territory of Lower California, Republic of Mexico, to various points within the United States of America and the incorporated City of San Diego, as designated by said passengers for hire.

III

That at said time there was in force and effect an ordinance which had been passed by the County of San Diego, a political subdivision of the State of California and a body corporate and politic, designated as Ordinance 464 (N.S.), as amended by Ordinance 609 (N.S.). That said ordinance provided for the licensing of the proprietors of taxicab businesses, designated in said ordinance as "taxicab operators" and for the licensing of drivers

[fol. 20] employed by said operators and made unlawful the operating of taxicabs in the unincorporated territory of San Diego County, without a license; that Section 9 of said ordinance in part provided: "The Sheriff may deny the application, or, having issued a permit, may revoke the same if the applicant or taxicab driver is, in the opinion of the Sheriff, unfit to drive a taxicab". That the Sheriff of the County of San Diego published and promulgated certain rules and regulations governing the use and operation of taxicabs and cars for hire in the unincorporated area of San Diego County; That among said regulations was Regulation No. 6, providing in part: "Taxicabs licensed in counties other than San Diego County will not be permitted to pick up passengers in San Diego County; no taxicab or car for hire licensed by this Office will be permitted to pick up passengers outside the limits of San Diego County". That said defendants Norman H. Buck and Miguel R. Guerra, pursuant to the complaint referred to as Exhibit "A" herein, were arrested, incarcerated, and admitted to bail.

IV

That thereafter Norman H. Buck and Miguel R. Guerra instituted an action for injunction in the United States District Court, Southern District of California, Southern Division, against the County of San Diego, J. D. Keller, District Attorney of said county, and Bert Strand, Sheriff of said county, bearing file No. 1151-SD, under which action [fol. 21] they procured a temporary restraining order and a preliminary injunction against said defendants from proceeding with the prosecution of the offense referred to in Exhibit "A". The matter came on regularly for trial in the United States District Court, the Honorable Jacob Weinberger, Judge Presiding. The various contentions of the parties were advanced through their attorneys of record and from the evidence introduced at the trial of the action, the Court made its findings of fact, conclusions of law, and judgment, copy of which findings of fact, conclusions of law, and judgment is annexed hereto and made a part of this stipulation, marked Exhibit "B". That said United States District Court assumed jurisdiction on the grounds that the matter in controversy arose under the Constitution, law, or treaties of the United States of America, to wit: That there was involved the right of

the plaintiffs to engage in foreign commerce and whether the ordinance referred to constituted an unreasonable burden or interference upon the right of Norman H. Buck and Miguel R. Guerra to engage in foreign commerce.

It is hereby understood that the findings of fact signed by the Honorable Jacob Weinberger in the above-mentioned action, may be considered as accurate statements of fact for purposes of this stipulation.

V

That after the decision so rendered by the United ——
[fol. 22] District Court, a difference of opinion arose between counsel representing Norman H. Buck and Miguel R. Guerra and counsel representing the defendants in said action, concerning the interpretation of said findings of fact, conclusions of law, and judgment. That by reason of the fact that there was some confusion concerning whether the activities of Norman H. Buck and Miguel R. Guerra constituted foreign commerce, and to what extent the same were subject to local regulation or prohibition, if at all, or whether the same simply constituted local commerce, counsel for Norman H. Buck and Miguel R. Guerra advised them to continue their taxicab activities, but to restrict the same solely and exclusively to the picking up and discharging of passengers at points between the Mexican Federal Zone, within the Republic of Mexico, and points in the United States without the unincorporated area of the County of San Diego. That the defendant County of San Diego as a consequence of the decision of the United States District Court, thereafter amended the provisions of the ordinance and for the pertinency of this stipulation eliminated the provision of Section 9 thereof, to wit: "The Sheriff may deny the application, or, having issued a permit may revoke the same if the applicant or taxicab driver is, in the opinion of the Sheriff, unfit to drive a taxicab". Substituting in the place and stead of said portion, the following: "The Sheriff may deny the application, or, having issued the license may revoke the same if the
[fol. 23] Sheriff shall determine that the applicant or taxicab operator is of bad moral character". That said County of San Diego likewise deleted Regulation No. 6 therefrom, which formerly had read: "Taxicabs licensed in counties other than San Diego County will not be permitted to

pick up passengers in San Diego County; no taxicab or car for hire licensed by this Office will be permitted to pick up passengers outside the limits of San Diego County".

VI

That said Norman H. Buck and Miguel R. Guerra, as well as one Louis C. Youngren thereafter verbally solicited from the Office of the Sheriff of the County of San Diego a taxicab operator's license so that they might be able to operate within the unincorporated limits of the County of San Diego. That Capt. E. C. Riley, an agent of Bert Strand, Sheriff of the County aforesaid, denied the applications made by said persons for a taxicab operator's license and directed said defendants to cease all taxicab operations within the unincorporated area of San Diego County, pending the outcome of the offense charged in Exhibit "A", which action was pending in the Justice's Court of National Township. Thereafter said persons, under the advice of their attorney Manual Ruiz, Jr., as aforesaid, resumed their activities in the taxicab transportation of passengers for hire, and on the 3rd and 4th days of June, 1950, said [fol. 24] Louis C. Youngren, Miguel R. Guerra and Norman H. Buck were arrested by the Office of the Sheriff of the County of San Diego for driving out and operating a taxicab in the unincorporated area of the County of San Diego. That at the time of said arrests and immediately prior thereto said defendants had picked up passengers within the Republic of Mexico, on the Mexican side of the International Border, in what is known as the Mexican Federal Zone. That they had been instructed by their passengers and were carrying passengers at the time of their arrests within the unincorporated area of the County of San Diego, through which county they were passing for the sole purpose of discharging said passengers on a continuous passage from the Republic of Mexico to places other than the unincorporated area of the County of San Diego within the State of California.

VII

That at the time of each arrest, the arresting officers ascertained that the defendants had picked up their passengers in Mexico, and were driving through the unincorporated area of San Diego County to discharge said pas-

sengers without the unincorporated limits of San Diego County. That prior to each arrest, the Office of the Sheriff received a telephone call from the defendants' taxi competitors stationed on the American side of the Border, advising said Sheriff's Office that each defendant was [fol. 25] leaving Mexico with passengers to the United States. That based on said information the Sheriff's Office intercepted the defendants in County territory and arrested them. At the place of arrest, taxi competitors of the defendants, stationed on the American side of the Border and who would follow the defendants to the place of arrest, would have the passenger load of each defendant transferred to said competitor's taxicab and for hire would take them to the passengers' destination.

That the gravamen of the offense upon which the arrest of each defendant was predicated, was the fact that said defendants had not obtained a written permit from the Sheriff of the County of San Diego, authorizing them, and each of them, to operate a taxicab in the unincorporated area of the County of San Diego. Annexed hereto, marked Exhibit "C", are copies of the complaints filed by the Sheriff of San Diego County in the Justice's Court of National Township, County of San Diego, State of California, against Norman H. Buck, Miguel R. Guerra, and Louis C. Youngren.

VIII

That Norman H. Buck, and Miguel R. Guerra, by permission of the Justice's Court first had and obtained demurred to the original complaints on file in said actions, copy of which demurrer, on file in Master Dockets Nos. 1956 and 1957 of said Justice's Court, is annexed hereto [fol. 26] and made a part hereof by reference. That thereafter Harold Curtis, Esq., of the Office of the District Attorney of the County of San Diego, moved for a dismissal of said cases and the Honorable Lowell Howe, Judge Presiding, granted the motion to dismiss. That thereupon, said three defendants once again verbally applied for a taxicab operator's license to the Sheriff of the County of San Diego, explaining to the latter that the action pending in the Justice's Court of National Township, for violation of County Ordinance 464(NS), had been dismissed. That said Sheriff, Bert Strand, refused to issue a permit author-

izing said defendants to operate a taxicab within the unincorporated area of the County of San Diego.

For purposes of this stipulation it will be assumed that the defendant Louis C. Youngren is possessed of all of the licenses and permits possessed by his co-defendant Norman H. Buck in the findings of fact and conclusions of law of the Honorable Judge Jacob Weinberger, but that said Louis C. Youngren at the time of his arrest did not have a written permit from the Sheriff of the County of San Diego to drive and operate a taxicab in the unincorporated area of the County of San Diego. All three defendants are covered by insurance as to the type and amount required by the county authorities.

[fol. 27] Dated: This 10 day of July, 1950.

James Don Keller, (S.) by Harold P. Curtis, Dep., Attorney for the People of the State of California, Plaintiff; (S.) Manuel Ruiz, Jr., Attorney for the Defendants; Norman H. Buck, Miguel R. Guerra, Louis C. Youngren.

[File endorsement omitted.]

[fol. 28] EXHIBIT "A" TO STIPULATED FACTS

IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

NORMAN H. BUCK, Defendant

COMPLAINT-CRIMINAL (Misdemeanor)

Personally appeared before me this 31st day of October, 1949, Harry M. Rocco, of Sheriff's Office, in the County of San Diego, State of California, who, being first duly sworn, complains and says that the crime of violation of Section 9 of Ordinance 464 of the County of San Diego has been committed by said defendant as follows: That said Norman H. Buck on or about the 31st day of October, 1949, in National

Township, in the said County of San Diego, State of California, and before the making or filing of this complaint, being then and there the driver of a taxicab, to wit, a motor vehicle used for the transportation of passengers for hire when driven by him at rates per mile, per trip, per hour, per day, per week, which vehicle being routed under the direction of the passengers, did then and there wilfully and unlawfully drive said taxicab in the unincorporated area of [fol. 29] the County of San Diego, to wit, Harborside, when his permit had been revoked, and the renewal of same was refused by the sheriff, the time for appeal to the Board of Supervisors had expired, and the decision regarding the revocation had become final;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

Harry M. Rocco.

Subscribed and sworn to before me this 31st day of October, 1949. ——— ———, Justice of the Peace of National Township, County of San Diego, State of California.

[fol. 30] IN THE JUSTICE'S COURT OF ——— TOWNSHIP, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MIGUEL ROBERTO GUERRA, Defendant

COMPLAINT-CRIMINAL (Misdemeanor)

Personally appeared before me this 31st day of October, 1949, Harry M. Rocco, of Sheriff's Office, in the County of San Diego, State of California; who, being first duly sworn, complains and says that the crime of violation of Section 9 of Ordinance 464 of the County of San Diego has been committed by said defendant as follows: That said Miguel Robert Guerra, on or about the 31st day of October, 1949, in National Township, in the said County of San Diego, State of California, and before the making or filing of this Complaint, being then and there the driver of a taxicab,

to wit, a motor vehicle used for the transportation of passengers for hire when driven by him at rates per mile, per trip, per hour, per day, per week, which vehicle being routed under the direction of the passengers, did then and there [fol. 31] wilfully and unlawfully drive said taxicab in the unincorporated area of the county of San Diego, to wit, Harborside, when his permit had been revoked and the renewal of same was refused by the sheriff, the time for appeal to the Board of Supervisors had expired, and the decision regarding the revokation had become final.

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

Harry M. Rocco.

Subscribed and sworn to before me this 31st day of October, 1949. ——— ———, Justice of the Peace of National Township, County of San Diego, State of California.

[fol. 32] EXHIBIT "B" TO STIPULATED FACTS

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 1151 SD

NORMAN H. BUCK and MIGUEL R. GUERRA, Plaintiff,

v.

THE COUNTY OF SAN DIEGO, a Political Subdivision of the State of California and a Body Corporate and Politic, and J. D. Keller, District Attorney of the Sheriff of the County of San Diego, Defendants

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause came on regularly for trial on the 23rd day of March, 1950, before the court sitting without a jury; Manuel Ruiz, Jr., and Alexander Ruiz, by Manuel Ruiz, Jr., appeared as attorneys for the plaintiff; James Don Keller, District Attorney of the County of San Diego, by Duane J. Carnes, Deputy District Attorney, appeared as attorneys

for the defendants, and Morey S. Levenson appeared as amicus curiae; and from the evidence introduced finds the facts as follows, to wit:

I

That the matter in controversy exceeds the sum of valuation of $3,000 exclusive of interest and costs and arises under the constitution, laws, or treaties of the United States of America, to wit: There is involved the right of the plaintiffs to engage in foreign commerce and the question [fol. 33] whether Ordinance No. 464 (New Series) of the County of San Diego, State of California, as amended by Ordinance No. 609 (New Series) of San Diego County constitutes an unreasonable burden or interference upon the right of the plaintiffs to engage in foreign commerce.

II

That the plaintiffs are natural born citizens of the United States and have been for some time prior to the commencement of the action herein engaged in the taxicab business in foreign commerce for a livelihood, transporting passengers for hire from a point within the territory of Lower California, Republic of Mexico, to various points within the United States of America including points within the incorporated City of San Diego and the unincorporated territory of the County of San Diego and other points as designated by said passengers for hire, and in the course of said business have picked up passengers within the unincorporated area of San Diego County and have discharged passengers within the unincorporated area of San Diego County.

III

That the plaintiff Norman H. Buck is possessed of a motor vehicle transportation license issued by the State of California Board of Equalization to engage in transportation of persons or property for hire by motor vehicles over the public highways of the State of California but subject to all laws of the State of California regulating the opera- [fol. 34] tions of motor vehicles for the transportation of persons or property for hire; that the plaintiff Norman H. Buck has a valid chauffeur's license from the Motor Vehicle Department of the State of California and a municipal license from the City of San Diego, California, to operate

one auto for hire as a business, which license covers a 1946 De Soto sedan operated by plaintiff Norman H. Buck; that plaintiff Norman H. Buck possesses a taxicab driver's license from the City of San Diego, licensing him to drive a taxicab, auto for hire, or sightseeing auto in accordance with the ordinances of the City of San Diego, *licensing him to drive a taxicab, auto for hire, or sightseeing auto in accordance with the ordinances of the City of San Diego.*

IV

That the plaintiff Miguel R. Guerra is possessed of a motor vehicle transportation license issued by the State of California Board of Equalization to engage in transportation of persons or property for hire by motor vehicles over the public highways of the State of California but subject to all laws of the State of California regulating the operations of motor vehicles for the transportation of persons or property for hire; that the plaintiff Miguel R. Guerra has a valid chauffeur's license from the Motor Vehicle Department of the State of California and a taxicab driver's license from the City of San Diego, California, licensing him to drive a taxicab, auto for hire or sightseeing auto in [fol. 35] accordance with the ordinances of the City of San Diego.

V

That the defendant County of San Diego is a political subdivision of the State of California situated within the Southern District of the State of California; that the defendant James Don Keller is the District Attorney and the defendant Bert Strand is the Sheriff for the County of San Diego.

VI

That the County of San Diego on the 5th day of April, 1946, adopted its Ordinance No. 464 (New Series) which was amended by Ordinance No. 609 (New Series) on May 12, 1947; that said ordinance provides for the licensing of the proprietors of taxicab businesses, designated in said ordinance as "taxicab operators" and for the licensing of drivers employed by such operators, and makes unlawful the operating of taxicabs in the unincorporated territory of San Diego County without a license; that section 9 of said ordinance as amended provides "The Sheriff may

deny the application, or, having issued a permit, may revoke the same if the applicant or taxicab driver is, in the opinion of the Sheriff, unfit to drive a taxicab."

VII

Said Sheriff published and promulgated certain rules and regulations governing the use and operation of taxicabs and cars for hire in the unincorporated area of San Diego [fol. 36] County; that among said regulations is Regulation No. 6 providing in part: "Taxicabs licensed in counties other than San Diego County will not be permitted to pick up passengers in San Diego County; no taxicab or car for hire licensed by this office will be permitted to pick up passengers outside the limits of San Diego County."

VIII

That the plaintiff Norman H. Buck was licensed as a taxicab operator and as a taxicab driver under said ordinance from on or about May 16, 1946, to October 17, 1949, in the County of San Diego; that the defendant Sheriff of said County on October 17, 1949, suspended said license and permit alleging as a cause of such suspension that said Buck had permitted a driver to operate his taxicab in the unincorporated area of San Diego County, which driver did not possess a valid San Diego County taxicab license or permit; that said Buck had failed to register with the Sheriff's Office a complete list of locations of taxicab stands from which he operated; that said Buck had picked up passengers outside the limits of San Diego County without having a valid license or permit authorizing picking up passengers in said territory outside San Diego County.

That said Norman H. Buck did not apply for a hearing before the Board of Supervisors as in said ordinance provided.

[fol. 37] That plaintiff Miguel R. Guerra was licensed as a taxicab operator under said license from May 26, 1946, until on or about February 1, 1949, at which time said Miguel R. Guerra voluntarily surrendered his taxicab operator's license to the Sheriff; that plaintiff Miguel R. Guerra was licensed as a taxicab driver under said ordinance from May 28, 1946, until April 4, 1949, at which time said license was revoked by said Sheriff, which revocation was sustained by

the Board of Supervisors after hearing on written charges as follows:

"May 26, 1946: Making a false application in that he—failed to give information to the effect that he had been arrested. Furnished a false address located in San Diego, California, while in effect he was a resident of Tia Juana, Mexico.

April 14, 1947: Operation of taxicabs, in the unincorporated area of San Diego County, without proper and approved insurance on taxi cabs.

October 17, 1947: Permitting operation of one of his taxi cabs, in the unincorporated area of San Diego County by a [fol. 38] driver who did not have a San Diego County taxi cab driver's license and permit.

February 23, 1949: The following report submitted by Deputies E. Howell and E. Henderson, Sheriff's South Bay Patrol Car:

> 'In making routine checks on all the taxi cabs operating at the Border, for proper licenses and general compliance with the County Ordinance regulating the operation of taxi cabs, Manuel Guerra was stopped for an inspection of his cab—he was warned about soliciting on the public highways and at that time he stated that due to the fact that deputies could not be on hand at all times he would solicit whenever we were not present.'

That no review of said decision of the Board of Supervisors was sought by the plaintiff Miguel R. Guerra in the courts of the State of California.

X

That since the respective licenses of each of the plaintiffs have been revoked as aforesaid, each of the plaintiffs have been arrested under complaints filed by said Sheriff charging each plaintiff with wilfully driving a taxicab in the unincorporated area of San Diego County without a valid San Diego County taxicab license or permit, and said Sheriff has threatened to continue to arrest plaintiffs at any time they are found carrying a passenger within said unincorpo- [fol. 39] rated area of the County of San Diego without said license.

As conclusions of law from the foregoing facts the Court concludes:

I

That this Court has jurisdiction in the premises.

II

That the plaintiffs are and each of them have been during all times material to this action, engaged in foreign commerce, but that their said business is subject to regulation and control under the police power of the State of California and the County of San Diego.

III

That Section 9 of said ordinance as amended, and as quoted in Paragraph VI of the findings herein, is void and unconstitutional in that no standard for the exercise of the Sheriff's discretion is set forth and as constituting an unlimited delegation to the Sheriff of the legislative powers of the Board of Supervisors.

IV

That Regulation No. 6 promulgated by said Sheriff and as quoted in Paragraph VII of the findings herein, is void as an attempted interference with and prohibition of interstate and foreign commerce insofar as it purports to restrict interstate or foreign commerce and is further void in that said ordinance contains no authority to the Sheriff to adopt [fol. 40] rules or regulations respecting activities of licenses or of taxicab operators or drivers outside of the territorial limits of San Diego County.

V

That except as hereinabove set forth said ordinance is a valid ordinance duly adopted in the exercise of the police power of the State of California and the County of San Diego.

VI

That in view of the findings and conclusions hereinabove made, equitable relief in the nature of a permanent injunction is not necessary, and the temporary injunction in effect should be dissolved, and a permanent injunction denied.

VIII

That each party should pay its or his costs of suit incurred herein.

Dated: April 18, 1950.

(S.) Jacob Weinberger, United States District Judge.

[fol. 41] Exhibit "B" to Stipulated Facts

In the United States District Court, Southern District of California, Southern Division

No. 1151 SD

Norman H. Buck and Miguel R. Guerra, Plaintiffs,

v.

The County of San Diego, a Political Subdivision of the State of California and a Body Corporate and Politic, and J. D. Keller, District Attorney of the County of San Diego, and Bert Strand, Sheriff of the County of San Diego, Defendants

Judgment

This cause came on regularly for trial before the court sitting without a jury on the 23rd day of March, 1950, Manuel Ruiz, Jr., and Alexander Ruiz, by Manuel Ruiz, Jr., appeared as attorneys for the plaintiff; James Don Keller, District Attorney in and for the County of San Diego, by Duane J. Carnes, Deputy District Attorney, appeared as attorneys for the defendants; Morey S. Levenson appeared as amicus curiae; the Court having heard the testimony and having examined the proofs offered by the respective parties and the Court being fully advised in the premises and having filed herein its findings of fact and conclusions of law and having directed that judgment be entered in accordance therewith,

Now Therefore

[fol. 42] It Is Hereby Ordered, Adjudged and Decreed that the portion of Section 9 of San Diego County Ordinance No. 464 (New Series) as amended, reading as follows "The Sheriff may deny the application or, having issued a per-

mit, may revoke the same if the applicant or taxicab driver is in the opinion of the sheriff unfit to drive a taxicab" is unconstitutional and void; in all other respects said ordinance is valid; that the portion of Regulation 6 of rules and regulations promulgated by the Sheriff of San Diego County governing the use and operation of taxicabs and cars for hire in the unincorporated area of San Diego County, reading as follows: "Taxicabs licensed in countries other than San Diego County will not be permitted to pick up passengers in San Diego County; no taxicab or car for hire licensed by this office will be permitted to pick up passengers outside the limits of San Diego County", is unconstitutional and void.

Plaintiffs are denied judgment for injunction. Each party shall pay his or its own costs. The injunction pendente lite is dissolved.

Dated this 19th day of April, 1950.

(S.) Jacob Weinberger.

[fol. 43] EXHIBIT "C" TO STIPULATED FACTS

IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

NORMAN H. BUCK, Defendant

COMPLAINT—CRIMINAL (Misdemeanor)

Personally appeared before me this 5th day of June, 1950, Lester Hennense, of Sheriff's Office, in the County of San Diego, State of California, who, being first duly sworn, complains and says that the crime of violation of County Ordinance No. 958 (New Series) amending Section 9 of County Ordinance 464 (New Series), as amended by Ordinance No. 609 (New Series) has been committed by said defendant as follows: That said Norman H. Buck on or about the 4th day of June, 1950, in National Township, in the said County of San Diego, State of California, and before the making or filing of this Complaint, did wilfully and unlawfully drive and operate a taxicab, to wit: a 1946 DeSoto

Limousine, Engine #S11-9513, in the unincorporated area of the County of San Diego, to wit: on Napels Street, in [fol. 44] Harborside, without first having obtained a written permit from the Sheriff of San Diego County authorizing said defendant so to do;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

_____

Subscribed and sworn to before me this 5th day of June, 1950. _____, Justice of the Peace of National Township, County of San Diego, State of California.

_____

[fol. 45] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MIGUEL GUERRA, Defendant

COMPLAINT—CRIMINAL (Misdemeanor)

Personally appeared before me this 5th day of June, 1950 Lester Henneuse, of Sheriff's Office, in the County of San Diego, State of California, who being first duly sworn, complains and says that the crime of violation of County Ordinance No. 958 (New Series) amending section 9 and County Ordinance 464 (New Series) as amended by Ordinance No. 609 (New Series) has been committed by said defendant as follows: That said Miguel Guerra on or about the 3rd day of June, 1950, in National Township, in the said County of San Diego, State of California, and before the making or filing of this Complaint, did wilfully and unlawfully drive and operate a taxicab, to wit: 1950 Ford Sedan, Commercial license #1199, in the unincorporated area of the County of San Diego, to wit: on U. S. #101, in San Ysidro, without [fol. 46] first having obtained a written permit from the Sheriff of San Diego County authorizing said defendant so to do;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

—— ——.

Subscribed and sworn to before me this 5th day of June, 1950. —— ——, Justice of the Peace of National Township, County of San Diego, State of California.

——

[fol. 47] In the Justice's Court of National Township, County of San Diego, State of California

The People of the State of California, Plaintiff;

vs.

Louis C. Youngren, Defendant

Complaint—Criminal (Misdemeanor)

Personally appeared before me this 5th day of June, 1950 Lester Henneuse, of Sheriff's Office, in the County of San Diego, State of California, who, being first duly sworn, complains and says that the crime of violation of County Ordinance No. 958 (New Series) amending Section 9 of County Ordinance 464 (New Series), as amended by Ordinance No. 609 (New Series) has been committed by said defendant as follows: That said Louis C. Youngren on or about the 3rd day of June, 1950, in National Township, in the said County of San Diego, State of California, and before the making or filing of this Complaint, did wilfully and unlawfully drive and operate a taxicab, to wit: 1948 Ford Sedan, Commercial License # 1181, in the unincorporated area of the County of San Diego, to wit: on U. S. # 101, in San Ysidro, [fol. 48] without first having obtained a written permit from the Sheriff of San Diego County authorizing said defendant so to do;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

—— ——.

Subscribed and sworn to before me this 5th day of June, 1950. —— ——; Justice of the Peace of National Township, County of San Diego, State of California.

[fol. 48a] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

Master Docket No. 1956

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MIGUEL ROBERTO GUERRA, Defendant

Master Docket No. 1957

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

NORMAN H. BUCK, Defendant

DEMURRER TO STIPULATED FACTS

Comes now the defendants Miguel Roberto Guerra and Norman H. Buck, after withdrawal of plea of not guilty by permission of court first had and obtained, and each for himself, separately, demurs to the complaints on file in the above entitled actions upon the ground that the facts stated do not constitute a public offense and on the further ground that said complaints contain matter which, if true, under the law would constitute a legal justification or excuse of the offense charged, and a legal bar to the prosecution thereof.

[fol. 48b] The specifications of the demurrer are as follows:

I

The complaints on file make direct reference to the Statute which defines the offense, to wit: the violation of Section 9 of Ordinance 464 N. S. of the County of San Diego. That said statute, in so far as definite elements which formerly were defined and included in the offense, has been declared unconstitutional by a court of competent jurisdiction, and the same is void, and said elements included in the offense no longer exist as part and parcel of the statute defining the offense, thus, the complaints charge the defendants with driving a taxicab in the unincorporated area of the County of San Diego "when their respective permits had been revoked and the renewal of the same had been refused by the Sheriff".

That said offense presupposes the fact that the Sheriff had issued a permit and had revoked the same; that Section 9 of Ordinance 464 N. S. of the County of San Diego contains the following language: "the Sheriff . . . having issued a permit, may revoke the same if the applicant or taxicab driver is, in the opinion of the Sheriff, unfit to drive a taxicab." That said Section 9 of Ordinance is void and unconstitutional in that no standard for the exercise of the Sheriff's discretion is set forth, and as constituting an unlimited delegation to the Sheriff of the legislative [fol. 48c] powers of the Board of Supervisors of the County of San Diego. That inasmuch as the portion of the statute constituting an element of the offense is void, under the charge as made the Justice's Court may pronounce a judgment of conviction, when, in fact, the statute which defines the offense or upon which the charge is predicated, has no validity.

II

That said complaints are further subject to demurrer inasmuch as they state that the taxicabs at the time of the commission of the offense were "being routed under the direction of the passengers" without stating that the passengers were routing the taxicabs within the unincorporated area of the County of San Diego.

That at the time of the alleged commission of the offense, Regulation No. 6, passed pursuant to the Ordinance by the Sheriff, and to which Ordinance reference is made upon the face of the complaint, and constituting an element of the crime defined and included in the offense, provided in part: "Taxicabs licensed in counties other than San Diego County will not be permitted to pick up passengers in San Diego County; no taxicab or car for hire licensed by this Office will be permitted to pick up passengers outside the limits of San Diego County."

That since the alleged commission of the offense, said Regulation No. 6, has been declared void by a court of competent jurisdiction, as an attempted interference with and [fol. 48d] prohibition of interstate and foreign commerce in so far as it purports to restrict interstate or foreign commerce and was further declared void in that said ordinance contains no authority to the Sheriff to adopt rules or regulations respecting the activities of licensees or of

taxicab operators or drivers outside of the territorial limits of San Diego County.

As a consequence of the fact that said regulation constituting a portion of the statute is now void, as aforesaid, it is essential in charging the offense to negative the exception and state that the defendants, and each of them, were being routed under the direction of the passengers to within the unincorporated area of the County of San Diego. That without such negative exception the accused do not receive sufficient notice of which offense is charged and the accused are not advised of the charge that they will be forced to meet at the time of the trial. That under the charge as made the Justice's Court may pronounce a judgment of conviction when the regulation, part of the original statute defining the offense and upon which the charge is predicated, no longer exist.

That the imperfections and defects hereinabove set forth, are prejudicial to the substantial rights of the defendants upon the merits.

Wherefore these defendants pray for a dismissal of the complaints.

(S.) Manuel Ruiz, Jr., Attorney for Defendants.

[fol. 48e] Authorities in Support

P. C. 1002; P. C. 1004 (4) (5); P. M. 1005

Norman H. Buck and Miguel R. Guerra vs. The County of San Diego, et al., case No. 1151-S. D. In the U. S. Dist. Ct. So. Dist. of Calif. Southern Division, and authorities submitted to said Ct. to sustain the judgment.

[fol. 49] In the Justice's Court of National Township

Docket No. 2092. Docket No. 2091. Docket No. 2090

[Title omitted]

Notice of Appeal—Filed September 22, 1950

Notice is hereby given that the defendant hereinabove and each of them do by these presents appeal to the Superior Court of the State of California in and for the County

[fol. 50] of San Diego from that certain Order denying Motion in Arrest of Judgment as well as final Judgment of Conviction made and rendered by the above Court on the 18th day of September, 1950.

(S.) Manuel Ruiz, Jr., Attorney for Defendants,

[File endorsement omitted.]

[fol. 51] AFFIDAVIT OF SERVICE BY MAIL—Omitted in Printing

[fol. 52] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

[Title omitted]

STATEMENT ON APPEAL—Filed September 29, 1950

The above cause was tried before the Honorable Lowell Howe, by submission on stipulated facts, and judgment of guilty was rendered against the defendants on the — day of September, 1950. James Don Keller by Duane J. Carnes, [fol. 53] Deputy District Attorney, appeared as Attorneys for the People of the State of California, and Manuel Ruiz, Jr., for defendants.

In view of the fact that the case was tried upon stipulated facts, there is no reporter's transcript.

It is agreed by the parties, therefore, that the portion of the proceedings in the court below, referred to as "Stipulated Facts" and certified to the Superior Court pursuant hereto, constitute the evidence and be made a part hereof by reference, for a review of the specification of grounds upon appeal.

The appellant does hereby urge and specify the grounds upon which he intends to rely on appeal, as follows:

1. That the judgment of conviction is against the evidence and against the law.

2. That the ordinance upon which the conviction is based is contrary to the constitution of the United States in that its enforcement amounts to an unconstitutional burden on foreign commerce.

(S.) Manuel Ruiz, Jr., Attorney for the Defendants.

ORDER

Within the time extended for filing, the foregoing statement is certified, settled, allowed, and ordered filed as Defendant's Statement on Appeal.

Dated: October 6th, 1950.

(S.) Lowell Howe, Judge.

[File endorsement omitted.]

[fol. 54] (AFFIDAVIT OF SERVICE BY MAIL—Omitted in printing)

[fol. 55] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO, APPELLATE DEPARTMENT

Superior Court No. 161612

Justice's Court Nos. 2092, 2091, 2090

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

NORMAN H. BUCK, Defendant and Appellant

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

MIGUEL R. GUERRA, Defendant and Appellant

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

LOUIS C. YOUNGREN, Defendant and Appellant

OPINION—Filed December 14, 1950

[fol. 56] Appeals from the Justice's Court of National Township of San Diego County, California, from judgments

of conviction of violation of county ordinance and from orders denying motion in arrest of judgment. Hohorable Lowell Howe, Judge. *Judgments, and order denying motion in arrest of judgments, affirmed.*

Manuel Ruiz, Jr., for Appellants.

James Don Keller, District Attorney, by Duane J. Carnes, Deputy District Attorney, for Respondent.

BURCH, J.:

The defendants were convicted of a violation of Section 9 of San Diego County Ordinance No. 464 (N. S.) as amended by Ordinance No. 609 (N. S.), which provides that "it shall be unlawful for any person to drive or to be in actual physical control of any taxicab in the unincorporated areas of the County of San Diego without first obtaining a permit in writing so to do from the Sheriff of the County of San Diego." It then requires the payment of a $1.00 fee annually; and examination by the sheriff as to the applicant's knowledge of the provisions of the ordinance; knowledge of the Vehicle Code, traffic regulations and geography of the county; and that the sheriff may grant or deny the permit or may revoke the same if he finds the person holding any such permit to be of bad moral character or convicted of an offense involving moral turpitude. Provision is made that if the permit is refused or revoked by the sheriff the applicant may appeal to the Board of Supervisors for a hearing thereon.

[fol. 57] According to the agreed statement of facts, the defendants were arrested while driving taxicabs on the highways in unincorporated territory in San Diego County. The defendants were not stopping to pick up or discharge passengers, using the highways only as a means of transporting passengers for hire from the Republic of Mexico, on their way to a destination outside of the unincorporated areas of the County of San Diego. This was their usual course of business. When not in use the taxicabs were stationed in Tijuana, Republic of Mexico, and all passenger service originated there. The defendants are American citizens.

Each of the defendants had applied for and been denied the license required by the ordinance in question. One only of the defendants appealed from the sheriff's decision to the Board of Supervisors, but his appeal was denied. No

one of the defendants has sought in the courts a review of the administrative action. Instead they contend that the ordinance, as applied to them, contravenes the commerce clause of the federal constitution, (Article I, Section 8), and is therefore void.

Since the constitution and laws of Congress are the supreme laws of the land, we will have to decide whether the ordinance is valid as tested by the commerce clause and acts of Congress thereunder. In this connection, it has been held that neither a tax measure nor a police regulation by [fol. 58] local authority may unduly burden nor be discriminatory as to the commerce clause. Our concern here is with a police regulation.

The defendants were engaged in foreign commerce. (*Bob-Lo Excursion Co. v. Michigan*, 333 U. S. 28.) The ordinance is an exercise of the State's police power properly delegated by the legislature of the State to the Board of Supervisors of the county. (*In re Martinez*, 22 Cal. (2d) 259). The federal power over commerce (Article I, Section 8, Clause 3, United States Constitution) is supreme (Article VI, Section 1, Clause 2, United States Constitution). The distribution of power between the State and federal system in regard to commerce belongs to Congress. (*Panhandle Eastern Pipe Line Co. v. Public Service Commission, etc.*, 332 U. S. 507.) In the event of conflict in that field the local law must give way to the supremacy of the federal law. (*Francis, et al. v. Southern Pacific Co.*, 333 U. S. 445.) This is true whether the local law be under the taxing power or under the police power in its more conventional sense. (*Freeman v. Hewit*, 329 U. S. 249.) Not all burdens upon commerce but only undue or discriminatory ones are forbidden. (*Postal Telegraph Cable Co. v. Richmond*, 249 U. S. 252, 259; *Western Live Stock, et al.* v. *Bureau of Revenue, et al.*, 303 U. S. 250, 254; *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U. S. 33, 46; *Nelson v.* [fol. 59] *Sears, Roebuck & Co.*, 312 U. S. 359; *Nippert v. City of Richmond*, 327 U. S. 416, 425.) It was recognized in *California v. Thompson*, 313 U. S. 109, that positive intervention by Congress was required to displace the reserve power of the State to promote safety and honesty in the business of motor carrier transportation beyond State lines. After Congress "enters the field" the State law and the State's power to enact law in the same field, stands or falls

upon the intent of Congress to exercise exclusive jurisdiction, or to accept the aid of the State. (*California v. Zook, et al.*, 336 U. S. 725.)

Congress entered the field of motor vehicle carriers for the first time by Act of August 9, 1935. (49 U. S. C. A. 301-327.) The National Transportation Policy Act was enacted September 18, 1940, Chapter 722, Title I, Section 15, 54 Statutes 919. One of the declared purposes of the latter Act is "to cooperate with the several states and the duly authorized officials thereof." By Section 303(b) of the above motor vehicle act "taxicabs, or other motor vehicles performing a bona fide taxicab service having a capacity of not more than six passengers and not operated on a regular route or between fixed termini" are excluded except "It shall be the duty of the commission to regulate the . . . qualifications and maximum hours of service of employees, and safety of operation and equipment." In performance of this mandate the Interstate Commerce Commission has [fol. 60] provided rules and regulations. (Code Federal Regulations, Parts 190-197.) These cover general definitions, hours of service, qualifications of drivers, driving of motor vehicles, accident reports, inspection and maintenance and carrying of explosives or other dangerous articles by motor vehicles.

Our question for the purpose of decision here is narrowed to whether the ordinance conflicts or coincides with the federal law above outlined. In this respect the ordinance exacts of the defendants at the point where they complain an annual fee of $1.00 which is no more than the cost of its administration. Defendants offer no evidence to the contrary. (*Western Union Telegraph Co. v. Borough of New Hope*, 187 U. S. 419; *Postal Telegraph-Cable Co. v. City of Richmond*, 249 U. S. 252; *Sprout v. City of South Bend*, 277 U. S. 163, 169; *Interstate Transit, Inc. v. Lindsey*, 283 U. S. 183; *South Carolina State Highway Dep't v. Barnwell Bros. Inc.*, 303 U. S. 177; *Aero Mayflower Transit Co. v. Board of Railroad Commissioners, etc.*, 332 U. S. 495.)

One attacking as unreasonably burdening commerce the validity of a regulatory or taxing measure enacted by State authority for the use of the highways, has the burden of showing a want of reasonable relation to the increased cost of maintenance and policing due to such traffic. (*Aero*

[fol. 61] *Mayflower Transit Co. v. Board of Railroad Commissioners, etc., supra.*)

The principal requirement of the ordinance is that the carrier's operator be of good moral character. This is a reasonable requirement of police regulations. (*In re Porterfield*, 63 Cal. App. (2d) 518, 536.) There is no such specific requirement in the federal regulations, Parts 190-197. Having in mind the purpose of the Act of 1940, *supra*, to cooperate with the State and its duly authorized officials, we can see no conflict here.

In *California v. Zook, et al.*, 336 U. S. 725, Sections 654.1, 654.3, of the California Penal Code were found not to conflict with the Federal Motor Carrier Act though the latter "has substantially the same provision." A quotation from the Zook case may be helpful: "It is difficult to believe that the I. C. C. intended to deprive itself of effective aid from local officers experienced in the kind of enforcement necessary to combat this evil—aid of particular importance in view of the I. C. C.'s small staff." (Page 737).

The State's interest in its own highways has been recognized superior to the federal interest against "burdening" commerce in *South Carolina State Highway Dep't v. Barnwell Bros.*, 303 U. S. 177, (State law forbids on highways vehicles of width greater than 90 inches); *Clark, et al. v.* [fol. 62] *Poor, et al.*, 274 U. S. 554, 557 (carrier required to procure a certificate and pay a tax for use of highways); *Maurer, et al. v. Hamilton, et al.*, 309 U. S. 598 (regulation of "size and weight"); *Hendrick v. State of Maryland*, 235 U. S. 610 (licensing and registration required of non-resident operator); *H. P. Welch Co. v. New Hampshire*, 306 U. S. 79 (State law limits hours on duty); *Aero Mayflower Transit Co. v. Board of Railroad Commissioners, etc.*, 332 U. S. 495 (annual State tax levied for use of highways).

Defendants argue that *H. P. Hood & Sons v. DuMond*, 336 U. S. 525, marks a departure from earlier decisions in interpreting the effect of local police regulations upon the federal commerce clause. The Court stated quite to the contrary: "New York's regulations . . . have been complied with. It is only additional restrictions, imposed for the avowed purpose and with the practical effect of curtailing the volume of interstate commerce, to aid local economic interests, that are in question here."

Defendants contend that what San Diego County may do, every county and municipality in the State may do. The force of the argument in a proper case was recognized in *Nippert v. City of Richmond*, 327 U. S. 416, 425. The record does not disclose that defendants are required by any other political division than San Diego County to evidence their fitness to operate taxicabs on the State's highways.

A peculiar situation of San Diego County in relation [fol. 63] to taxicab passenger traffic across the border from Mexico would seem to put the county in a position to exercise such control over this traffic as might ordinarily be exercised by the State legislature since taxicab control is delegated by the State to the county. (*See Bob-Lo Excursion Co. v. Michigan, supra.*)

We are of the opinion that the ordinance's requirement of examination to show good moral character of taxicab operators does not conflict with the Federal Motor Carrier Act, nor does it coincide with any regulation of the Interstate Commerce Commission (Code Federal Regulations, Parts 190-197). The ordinance, moreover, in the respect mentioned, is not in conflict with the National Transportation Policy Act of 1940.

The judgments are affirmed.

(S.) Burch, J.

We concur.

(S.) Turrentine, P. J. (S.) Glen, J.

[File endorsement omitted.]

[fol. 64] In the Superior Court of California

[Title omitted]

Petition for Rehearing—Filed December 21, 1950

Come now the above named appellants and respectfully petition the Honorable Court to vacate the decision and judgment heretofore rendered in the above entitled cause, and enter a new judgment overruling the action of the lower Court.

Such petition is based upon the grounds that the Court erred in sustaining the conviction of the lower Court, which conviction was against the evidence and against the law.

Appellants will urge and specify points within said grounds by further writing in view of the fact that they did not receive notice of the Court's opinion until December 18, 1950.

[fol. 65] Wherefore, appellants pray for judgment, and that the judgment of the Court heretofore entered be vacated and set aside, and the Court enter a new judgment reversing the action of the lower Court.

Respectfully submitted. (S.) Manuel R. Ruiz, Jr., by H. M., Attorney for Appellants, 704 South Spring Street, Los Angeles 14, California.

Received a copy of the within this 21 day of December, 1950.

James Don Keller, district Attorney, By (S.) A. J. O'Keefe, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 66] IN THE SUPERIOR COURT OF CALIFORNIA

[Title omitted]

PETITION FOR REHEARING

(Supplement)

Appellants heretofore filed their Petition for Rehearing upon the grounds that the court erred in sustaining the conviction of the lower court, which conviction was against the evidence and against the law, and do hereby supplement the same more specifically as follows:

I

The Appellate Court failed to consider and pass upon the point that the defendants and each of them were deprived of their constitutional rights, under color of law.

The Appellate Court restricted its decision and opinion [fol. 67] to the point that the ordinance was on its face consistent with the Federal Constitution, and failed to

determine that the acts of the Sheriff of the County of San Diego exceeded the local application of the ordinance, and under color or pretense thereof, nevertheless violated the Federal law, and arrested the defendants while lawfully engaged in foreign commerce, by the unconstitutional enforcement of the law, amounting to a PROHIBITION. The evidence indicated that the license issued to defendant Buck was cancelled because said defendant stationed his cab and operated out of Mexico, without the permission of the Sheriff. Said defendant's character and morals were not remotely involved in the arbitrary cancellation.

II

The Appellate Court erroneously assumed that the annual license fee charged by respondent as a pre-requisite to the physical control of a taxicab within respondent County Limits, was the munificent sum of $1.00 per year, when in fact the Ordinance in evidence required that defendants first apply to the Sheriff and procure from the tax collector a license and pay an annual license fee of $50.00. The palpable difference in amount impels a reconsideration as the presumptions of law indulged in by the Appellate Court, are inapplicable. In any event, defendants tendered the $50.00 to respondent Sheriff, which was refused. That any tender or applications made for license by one engaged [fol. 68] in foreign commerce is refused.

III

The Appellate Court failed to reconsider that in a prior Federal case between the same parties involving the same licenses and which constitutes an estoppel in evidence, the United States District Court, in its decision holding a portion of the ordinance unconstitutional, did not hold that an appeal to the San Diego Board of Supervisors or State Courts, was a pre-requisite to a valid attack on the constitutionality of the ordinance. That said decision forms, by stipulation, a part of the case at bar, and is consistent with the defendant's theory that a license from the County of San Diego is not essential to engage in foreign commerce.

IV

The Appellate Court assumed that the only political subdivision requiring "fitness to operate taxicabs on the

State highways" was the County of San Diego. The record indicated that defendants were possessed of Chauffeurs' Cards permitting the driving of taxicabs for hire, by the Chief of Police of the City of San Diego, in addition to being possessed of Chauffeurs' licenses isued by the Department of Motor Vehicles of the State of California, as well as Motor Vehicle Transportation Licenses which authorizes the defendants and each of them, to engage in transportation of persons or property for hire or compensation [fol. 69] over the public highways of the State of California.

Wherefore, appellants' Petition for Rehearing. Dec. 27, '50.

(S.) Manuel R. Ruiz, Jr., Attorney for Appellants, 704 South Spring Street, Los Angeles 14, California.

[fol. 70] IN THE SUPERIOR COURT OF CALIFORNIA

[Title omitted]

REPLY TO PETITION FOR REHEARING—Filed Jan. 2, 1951

In reply to Appellants' points as presented Respondents People of the State of California allege:

I

As to alleged discriminatory enforcement of the ordinance by refusing or revoking licenses of Appellants, the remedy is clearly by following the administrative procedure set forth in the ordinance and provided by the California Constitution and decisions. An appeal lies to the Board of Supervisors and certiorari or mandamus may be used in the courts to review arbitrary denial or revocation of a license. Such a remedy being provided, an ordinance is not to be held unconstitutional because a license is refused or revoked. The remedy is not for the court to sanction defiance of the ordinance but instead for the aggrieved party to exhaust the remedies provided. As stated in Re- [fol. 71] spondent's authorities, official and administrative action is presumed to be taken in good faith and affirma-

tive evidence must be presumed to establish the contrary. Among the authorities on this point are:

Code Civ. Proc. sec. 1963 sub. 15
Alexander v. Scattergood, 51 Cal. App. 2d 127
Los Angeles v. Glassell, 203 Cal. 44

In addition to the charge against Buck that he had picked up passengers outside the county without having an effective and applicable license there to operate, Buck was also charged with having failed to register with the Sheriff a complete list of the taxicab stands from which he operated and more important, was charged with having permitted a driver to operate his cab in the unincorporated area of San Diego County which driver did not possess a valid San Diego County taxicab license or permit. (Federal court findings, p. 4 lines 19-28).

Buck sought no relief from the Board of Supervisors or the California courts.

Guerra's revocation is apparently not challenged in these proceedings; numerous sufficient charges were made by the Sheriff and sustained by the Board of Supervisors. (Federal court findings, p. 5).

Apparently Youngren's applications led to no further proceedings; he was not a party to the Federal court proceeding.

[fol. 72]

II

As to failure of the court to consider the reasonableness of the $50 annual fee to engage in business as well as the $1 fee for driving a taxi, the complaint charged only a violation of sec. 9, driving without obtaining the $1 permit, Sec. 14 declares that each section is enforceable regardless of the validity of any other.

Respondents in their brief discussed at length the validity of the $50 fee and believe that the arguments and authorities there set forth are sound and applicable.

III

It is admitted that the Federal court decision does not preclude this court from reconsidering constitutional questions. This court has considered such questions.

The constitutionality of the application of a valid ordinance, as distinct from the constitutionality of the ordi-

nance on its face, involves the problem of its internal provisions for review of possible arbitrary application by the sheriff. If administrative remedies are provided they must be exhausted before judicial interference can be justified or before it can be said that the administration of the ordinance oversteps constitutional limitations.

In re Harmann, 25 Cal. App. 2d 55 at 60
In re Flaherty, 105 Cal. 558, 562
McDonough v. Goodcell, 13 Cal. 2d 741
[fol. 73] Cantrell v. Los Angeles, 87 Cal. App. 2d 471
In re West, 75 Cal. App. 591

However, on the record before the court we think the necessary conclusion on this point is, not only must administrative remedies be exhausted but that since official regularity of action is presumed, there is a complete failure of any evidence or admission in the record to establish the contrary.

IV

As to other licenses or certificates held by appellant, the Motor Vehicle Transportation License is purely a revenue measure and does not involve local regulation. Rev. & Tax Code secs. 9601-10501. The chauffeur's license is necessary to obtain a permit under the ordinance but obviously does not establish conclusively that its possessor has all the qualifications reasonably required by the ordinance. The fact that appellants have obtained licenses from the City of San Diego fortifies the conclusion that local governmental agencies may properly regulate the driving of taxicabs within their geographical limits as held in In re Martinez, 22 Cal. 2d 259.

The application for a rehearing should be denied.

Respectfully submitted, James Don Keller, District Attorney in and for the County of San Diego, State of California. By /s/ Duane J. Carnes, Deputy.

[File endorsement omitted.]

[fol. 73a] IN THE SUPERIOR COURT OF CALIFORNIA

[Title omitted]

REMITTITUR—Filed Jan. 10, 1951

This cause having been argued and submitted, and fully considered, judgments are ordered as follows:

It is ordered and adjudged that the judgments made and entered in the Justice Court of the National Township, County of San Diego, State of California, in the above entitled cause, be and the same are hereby affirmed.

(S.) Turrentine, Presiding Judge; Burch, Judge; Glen, Judge.

[File endorsement omitted.]

Jan. 10, 1951.

[fol. 74] IN THE SUPERIOR COURT OF CALIFORNIA

[Title omitted]

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT AND REQUEST FOR STAY OF REMITTITUR—Filed January 15, 1951

[fol. 75] To the Appellate Department of the Superior Court:

Notice Is Hereby Given that the defendants and appellants in the above-captioned suit and controversy intend to appeal and do hereby appeal from the above Superior Court, Appellate Department thereof, to the Supreme Court of the United States to review its final Judgment and Decision, affirming the final Judgment of the Justice's Court of National Township, California.

Appellants request a Stay of Issuance of Remittitur to the Justice's Court of National Township of San Diego County, California, and the enforcement of the Judgment of the above-mentioned Court until such time as the Superior Court of the State of California in and for the County of San Diego Appellate Department shall be advised of the

final action of the United States Supreme Court in said matter.

(S.) Manuel R. Ruiz, Jr., Attorney for Defendants and Appellants.

Dated: January 12, 1951.

[File endorsement omitted.]

[fol. 76] In the Superior Court of California

[Title omitted]

Order Staying Remittitur and Execution & Recalling Remittitur—Filed January 15, 1951

[fol. 77] Upon application of the appellants for a Stay of Remittitur and Stay of Execution of the Judgment of this Court, it is hereby ordered that issuance and transmission of the Remittitur of this Court and the Order and Judgment of this Court in the above-entitled action be and the same is hereby stayed until such time as this Court shall be advised of the final action of the United States Supreme Court in said matter.

(S.) Turrentine, Judge.

Dated: ——, ——.

(S.) Burch, J. (S.) Glen, J.

[File endorsement omitted.]

[fol. 78] In the Superior Court of California

[Title omitted]

Praecipe for Record

To the Clerk of the Above Named Court:

You are hereby requested and instructed to prepare and [fol. 79] submit to the Clerk of the United States Supreme Court, Washington, D. C. a full and complete copy of the papers and files constituting the record of the above-named

court, upon the Appeal in the above-entitled cause, including the following papers:

(1) All papers certified or deposited with the Superior Court, Appellate Division, by the Honorable Lowell Howe, Justice of the Peace, National Township, California, including complaints, Agreed Statement of Facts, as well as exhibits included therein by reference, Docket, Judgment and Opinion of the Justice's Court, and Notice of Appeal to the Superior Court Appellate Department.

(2) All papers, documents, and records deposited with or received by the Superior Court, Appellate Division, from the Justice's Court of National Township of San Diego County, California, in connection with said Appeal, including Notice of Appeal, Statement on Appeal, Docket of the Superior Court Clerk, as well as the final Judgment, Decision, and Opinion of the Superior Court of the State of California in and for the County of San Diego, Appellate Department.

(3) Appellate's Petition for Rehearing and Order of Court Denying the Same, as well as this Praecipe.

(S.) Manuel R. Ruiz, Jr., Attorney for Appellants.

Dated: January 12, 1951.

[fol. 80] In the Superior Court of California

[Title omitted]

Order Recalling Remittitur—Filed January 15, 1951

It Appearing that Notice of Appeal to the United States Supreme Court and Request for Stay of Remittitur having [fol. 81] been filed herein. It Is Ordered that the Remittitur heretofore issued be and is hereby recalled.

Dated Jan. 15, 1951.

(S.) L. N. Turrentine, Presiding Judge.

[File endorsement omitted.]

[fol. 82] IN THE SUPERIOR COURT OF CALIFORNIA

MINUTE ENTRIES

Friday, December 10, 1950, Court Convenes at Ten A. M.

Present: Hon. L. N. Turrentine, Hon. Robt. B. Burch, Hon. W. A. Glen.

Clerk: T. H. Sexton, by J. G. Gruebele.
Reporter: Audrey Kerkhoff.

No. 161612

PEOPLE

vs.

GUERRA, BUCK & YOUNGREN

Comes the plaintiff, respondent by the District Attorney J. D. Keller appearing by Duane J. Carnes, and defendants, appellants by Manuel Ruiz, Jr. Said appeal presented with argument of counsel, and submitted on briefs filed, and order taken under advisement.

14 Dec., 1950—Opinion filed. Judgments, and orders denying motion in arrest of judgments, affirmed.

Friday, January 5, 1951

No. 161612

PEOPLE

vs.

GUERRA, BUCK & YOUNGREN

This matter having been submitted on briefs and taken under advisement, by the Court the petition for rehearing is denied.

[fol. 83] Monday, January 15, 1951

No. 161612

PEOPLE

vs.

BUCK, et al.

Defendants having this day filed Notice of Appeal to the Supreme Court of the United States, Praecipe for transcript and Application for recall of Remittitur from the Justice's Court, it is ordered that the Remittitur herein be and is recalled in accordance with the order signed by the presiding judge filed this date.

Thursday, February 8, 1951

Objections to Transcript filed.

Tuesday, February 13, 1951

Order that Transcript be augmented as requested by objector.

[fol. 83a] EXHIBIT "A" TO JURISDICTIONAL STATEMENT

IN THE JUSTICE COURT OF NATIONAL TOWNSHIP

Ordinance No. 464 (New Series)

An Ordinance Regulating the Operation of Taxicabs Within the Unincorporated Area of San Diego County, and Requiring Permits and Licenses Therefor. (As Amended by Ordinances Nos. 609 (New Series), 958 (New Series), and 964 (New Series).

The Board of Supervisors of San Diego County do ordain as follows:

Section 1. As used in this ordinance, "taxicab" means a motor vehicle, as that term is defined in the Vehicle Code, used for the transportation of passengers for hire when

driven by the owner or by an agent of the owner at rates per mile, per trip, per hour, per day, per week, per month, or per other period of time, which vehicle is routed under the direction of the passengers or other persons hiring such vehicle.

Section 2. As used in this ordinance, "taxicab operator" means a person, firm, partnership, or corporation engaged in the business of running, driving, or operating one or more taxicabs and carrying passengers in such taxicab or taxicabs for hire within the unincorporated area of the County of San Diego.

Section 3. As used in this ordinance, "taxicab driver" means an individual who drives or is in actual physical control of a taxicab in which passengers are carried for hire within the unincorporated area of the County of San Diego.

Section 4. (*Amended by Ord. No. 958 adopted 4-10-50, and amended again by Ord. No. 964 (New Series) adopted 5-22-50 to read as follows:*) Within 10 days from the effective date of this ordinance every taxicab operator shall apply to the sheriff and procure from the Tax Collector a license and pay an annual license fee of $50.00 (plus $1.00 per year per taxicab), which shall be paid by the applicant to the Tax Collector and shall be due on the first day of June of each year. Licenses issued subsequent to the first day of September, the first day of December, and the first day of March shall be issued at a quarterly reduction of $12.50 per quarter.

The sheriff may in his discretion direct the Tax Collector to issue a temporary permit pending final action on such application for license. If a license is revoked the license shall be forthwith surrendered to the sheriff, who shall thereupon deliver to the licensee a requisition for the refund of the unearned portion of the license fee, calculated to the nearest month. The sheriff may deny the application or having issued the license may revoke the same if the sheriff shall determine that the applicant or taxicab operator is of bad moral character or is guilty of violation of any of the provisions of this ordinance or of any lawful regulation promulgated pursuant thereto or has been convicted of any offense involving moral turpitude.

Applications for taxicab operator's licenses shall be filed with the sheriff on a form furnished by the sheriff which, when completed, will contain full personal information con-

cerning the applicant, type of business to be conducted and description of equipment to be used.

Any person whose taxicab operator's license shall have been revoked or renewal thereof is refused by the sheriff may within ten days after receipt of notice thereof appeal to the Board of Supervisors for a hearing thereon and the decision of the Board of Supervisors shall be final. If no appeal is taken within ten days the action by the Sheriff shall be final.

[fol. 83b] To facilitate the hearing and disposition of such appeal, the Board of Supervisors may appoint a referee to take testimony and to report his findings and recommendations to the Board. If the Board appoints a county officer or county employee to act as referee, he shall serve as such referee without any additional compensation. All time spent as a referee shall be considered as time spent by such officer or employee in performing the duties of his position.

Section 5. The Tax Collector shall not issue a taxicab operator's license or permit unless and until instructed to do so by the sheriff.

Section 6. Every applicant for a taxicab operator's license shall file his application with the sheriff on a form to be furnished by the sheriff. The application shall be signed by the applicant and shall contain:

a) Name and address of the applicant.

b) Kind and amount of public liability and property damage insurance covering each vehicle to be used for the acceptance or carriage of passengers for hire within the County.

c) Owner's trade name and business address.

d) Number of vehicles to be used for accepting or carrying passengers for hire within the county, their make, model (year) and seating capacity.

e) Schedule of rates to be charged.

f) Such further information as the sheriff may require.

Section 7. The sheriff shall not order the issuance of any taxicab operator's license or temporary permit until the applicant first files with the sheriff a policy or certificate of insurance, which policy or certificate shall comply with

the provisions of this ordinance, and shall first be approved by the district attorney.

Section 8. The policy of insurance required before a taxicab operator's license or permit can be issued shall insure the public against any loss or damage for which the operator is legally liable that may result to any person or property from the operation of any taxicab used by the taxicab operator in his business as such. The maximum amount of recovery in such policy shall not be less than the following sums:

a) For the injury to any one person, or the death of any one person in any one accident, $10,000.

b) For the injury to two or more persons, or the death of two or more persons, or the injury to one person or more, and the death of one person or more, in any one accident, $20,000.

c) For the injury or destruction of property in any one accident, $5,000.

Section 9. (*Amended by Ord. No. 609 (New Series) adopted 5-12-47; and again amended by Ord. 958 (New Series) adopted 4-10-50, to read as follows:*) It shall be unlawful for any person to drive or to be in actual physical control of any taxicab in the unincorporated area of the County of San Diego without first obtaining a permit in writing so to do from the sheriff of the County of San Diego.

Applicants for such permits shall file applications therefor with the sheriff of the County of San Diego on a form furnished by the sheriff which, when completed, will contain full personal information concerning the applicant.

Upon obtaining a permit as herein required the holder of such permit shall be entitled to an identification card of such design, and bearing such number as the sheriff may prescribe, upon payment of a fee of $1.00 annually, therefor, which shall be paid by the applicant to the tax collector and shall be due on the 1st day of June of each year. Such card shall be carried by the permittee during all business hours and shall not be transferable.

[fol. 83c] Each applicant for a permit shall be examined by the sheriff as to his knowledge of the provisions of this ordinance, the Vehicle Code, traffic regulations and the geography of the county, and if the result of the examina-

tion is unsatisfactory he shall be refused a permit. The sheriff may deny the application or having issued the permit may revoke the same if the sheriff shall determine that the applicant or taxicab driver is of bad moral character or is guilty of violation of any of the provisions of this ordinance or of any lawful regulation promulgated pursuant thereto or has been convicted of any offense involving moral turpitude.

The sheriff may in his discretion direct the tax collector to issue a temporary permit pending final action on such application for permit. If a permit is denied or revoked, the permit shall be forthwith surrendered to the sheriff. No portion of the fee for a temporary or permanent taxicab driver's permit shall be returnable upon denial or revocation of such permit.

Any person whose taxicab driver's permit shall have been revoked or renewal is refused by the sheriff, may with ten (10) days after receipt of notice thereof, appeal to the Board of Supervisors for a hearing thereon and the decision of the Board of Supervisors in this regard shall be final. If no appeal is taken within ten days, the action of the sheriff shall be final.

To facilitate the hearing and disposition of such appeal, the Board of Supervisors may appoint a referee to take testimony and to report his findings and recommendations to the Board. If the Board appoints a county officer or county employee to act as referee, he shall serve as such referee without any additional compensation. All time spent as a referee shall be considered as time spent by such officer or employee in performing the duties of his position.

Section 10. At time of filing application, every taxicab operator operating in the unincorporated area of the County of San Diego shall file with the sheriff a true and correct statement of the rates to be charged for the transportation of passengers in any and all vehicles for hire operated by said operator, and such operator shall not change or modify said rates in any manner without first obtaining written approval from the sheriff and the filing of said modified or changed rates with the sheriff.

There shall be displayed in the passenger compartment of each taxicab in full view of the passengers a card not less than four inches by six inches in size, which shall have plainly printed thereon the name of the operator, or the

fictitious name under which said operator operates, the business address and telephone number of said operator, and a correct schedule of the rates to be charged for conveyance in said vehicle.

Section 11. (*Amended by Ord. No. 958 (New Series) adopted 4-10-50, to read as follows:*) Every taxicab operator shall keep such records and make such reports as the sheriff may require. The sheriff may adopt reasonable regulations not inconsistent with the provisions of this ordinance and the same shall be in force from and after their approval by resolution of the Board of Supervisors.

Section 12. It shall be unlawful for any person to solicit passengers for taxicabs in any public street, sidewalk, highway or place in the unincorporated area of the County of San Diego except the driver thereof when seated within the vehicle.

Section 13. Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by forfeiture of his permit, and by a fine not exceeding Five Hundred Dollars ($500), or by such forfeiture and imprisonment in the county jail for not more than six (6) months, or by both such forfeiture, fine and imprisonment.

[fol. 88d] Section 14. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, the Board of Supervisors hereby declares that it would have passed this ordinance irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases thereof be declared unconstitutional.

Section 15. This ordinance shall take effect and be in force at the expiration of thirty days from and after its passage, and before the expiration of fifteen days after its passage it shall be published once, with the names of the members voting for and against the same, in the San Diego Union, a newspaper of general circulation published in the County of San Diego.

Passed, approved and adopted this 1st day of April, 1946.

(S.) David W. Bird, Chairman of the Board of Supervisors of the County of San Diego, State of California.

The above ordinance was adopted by the following vote:
Supervisor DeGraff Austin, voting "Aye"
Supervisor David W. Bird, voting "Aye"
Supervisor James A. Robbins, voting "Aye"
Supervisor Dan Rossi, voting "Aye"
Supervisor Dean E. Howell, voting "Aye"

Attest my hand and the seal of the Board of Supervisors this 1st day of April, 1946.

J. B. McLees, County Clerk and ex officio Clerk of the Board of Supervisors. By: (S.) M. Nasland, Deputy.

[fol. 84] EXHIBIT "C" TO JURISDICTIONAL STATEMENT

IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

Docket No. 2092

Docket No. 2091

Docket No. 2090

[Title omitted]

OPINION OF COURT

The County Ordinance which the defendants are accused of violating provides that:

(1) It shall be unlawful for any person to drive, or be in actual physical control of any taxicab in the unincorporated area of the County of San Diego without first obtaining a permit in writing so to do from the Sheriff of the [fol. 85] County of San Diego.

(2) The Sheriff may deny the application, or having issued the license, may revoke the same if the Sheriff shall determine that the applicant, or taxicab operator, is of bad moral character, or is guilty of violating any of the provisions of this Ordinance, or of any lawful regulation promulgated pursuant thereto, or has been convicted of any offense involving moral turpitude.

(3) Every applicant within ten days from the Sheriff's decision may appeal to the Board of Supervisors.

(4) Every taxicab operator shall—pay an annual license fee of fifty dollars, plus one dollar per year per taxicab.

The pertinent facts are as follows:

(1) The defendants, at a time when said Ordinance was in full force and effect, were not licensed to operate taxicabs in the unincorporated area of the County of San Diego by the Sheriff of San Diego County.

(2) The defendants, while not so licensed and while the Ordinance was in full force and effect, drove taxicabs carrying passengers for hire through an unincorporated area of the County of San Diego.

(3) The defendants had picked up said passengers within the Republic of Mexico, on the Mexican side of the International Border, in what is known as the Mexican Federal Zone.

[fol. 86] (4) The defendants had been instructed by their passengers to carry them and were carrying them to destinations in the City of San Diego, outside the unincorporated area of the County of San Diego.

(5) The defendants, prior to the said carrying of passengers, and while the said ordinance was in full force and effect, applied to the Sheriff for a permit, and were denied. They did not appeal to the Board of Supervisors.

The defendants admit the foregoing facts, but by way of defense advance the following contentions:

(1) That the Ordinance is unconstitutional on its face.

(2) That the Ordinance is inapplicable to the defendants because the activity in which they are engaged is foreign commerce.

(3) That the fifty dollar license fee is an unreasonable burden on foreign commerce.

(4) That the Sheriff unlawfully refused licenses to the defendants.

This Court does not question the proposition that it is its duty to consider the constitutionality of the Ordinance and disregard the Ordinance if in its opinion the Ordinance is unconstitutional.

The defendants contend the Ordinance is invalid because [fol. 87] it authorizes the Sheriff to refuse an applicant a license if he determines that the applicant is of "bad moral character", but provides the Sheriff with no standard for use in making such a determination. This Court considers only whether "good moral character" is an expression so vague as to invalidate the Ordinance. If the Sheriff in-

correctly found the defendants to lack "good moral Character" their remedy is appeal to the Board of Supervisors, and the question may be reviewed by the Superior Court in mandamus or certiorari. "Good moral character" has for a long time been included in the statutes as a prerequisite to the exercise of certain privileges, as, for example, the right to practice law. In the opinion of the Court it is an acceptable test.

The defendants also contend that the Ordinance is invalid because it contains nothing within the police power not already covered by state law. However, the Ordinance does require of the applicant a knowledge of the geography of the County.

In the opinion of this Court the Ordinance is constitutional on its face.

The defendants contend that the fifty dollar annual license fee is an unreasonable burden on foreign commerce. [fol. 88] There is no evidence in the stipulated facts as to the cost of enforcing the Ordinance, and, in the absence of such evidence, the Court will assume that the fee was reasonable. The Court also finds in the records of this Court of which it takes judicial notice, that the activity of the defendants involves the driving of taxicabs daily through the unincorporated area of the County. Apparently their activity, although foreign commerce, requires as much supervision as the business of taxicab drivers operating entirely within the County.

The defendants contend they cannot be required to obtain a license because they are not doing business in San Diego County. The Ordinance is a police measure and not merely a tax on business. In the opinion of this Court the Ordinance is applicable to the defendants.

The defendants contend that the Sheriff, under color of authority, unlawfully discriminated against the defendants to suppress competition. This Court will not consider this question. If the defendants believe the Sheriff refused a license through either error or prejudice their remedy is appeal to the Board of Supervisors and the Superior Court.

In the opinion of this Court the defendants are guilty as [fols. 89-94] charged and they are directed to appear in Court on September 18, 1950, at 9:00 A. M.

(S.) Lowell Howe, Justice of the Peace of National Township.

[fol. 95] IN THE SUPERIOR COURT OF CALIFORNIA

[Title omitted]

ORDER ALLOWING APPEAL

Defendants, Norman H. Buck, Miguel R. Guerra, and Louis C. Youngren, having made and filed their petition on January 12, 1951, praying for an Appeal to the Supreme Court of the United States from the final judgment and decree of the Superior Court of the State of California in and for San Diego County, Appellate Department, entered on January 10, 1951, and from each and every part thereof, and having presented their Assignment of Errors and [fol. 96] Prayer for Reversal and their Statement as to the Jurisdiction of the Supreme Court of the United States on Appeal, pursuant to the Statutes and Rules of the Supreme Court of the United States, in such cases made and provided,

Now therefore it is hereby ordered that said Appeal be and the same is hereby allowed as prayed for.

It is further ordered that citation shall issue in accordance with law.

(S.) L. N. Turrentine, Presiding Judge.

[fol. 97] IN THE SUPERIOR COURT OF CALIFORNIA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 4, 1951

Norman H. Buck, Miguel R. Guerra, and Louis C. Youngren, defendants in the above-entitled cause, in connection with their appeal to the Supreme Court of the United States, hereby file the following Assignment of Errors upon which they and each of them will rely in the prosecution of said appeal from the final judgment of the Superior Court of the State of California in and for the County of San Diego, Appellate Department entered on January [fol. 98] 10, 1951.

I

The Appellate Court failed to consider and pass upon the point that the defendants and each of them were deprived of their constitutional rights, under color of law.

The Appellate Court restricted its decision and opinion to the point that the ordinance was on its face consistent with the Federal Constitution, and failed to determine that the acts of the Sheriff of the County of San Diego exceeded the local application of the ordinance, and under color or pretense thereof nevertheless violated the Federal law, and arrested the defendants while lawfully engaged in foreign commerce, by the unconstitutional enforcement of the law, amounting to A PROHIBITION. The evidence indicated that the license issued to defendant Buck was cancelled because said defendant stationed his cab and operated out of Mexico, without the permission of the Sheriff. Said defendant's character and morals were not remotely involved in the arbitrary cancellation.

II

The Appellate Court erroneously assumed that the annual license fee charged by respondent as a prerequisite to the physical control of a taxicab within respondent County Limits, was the munificent sum of $1.00 per year, when in fact the Ordinance in evidence required that defendants [fol. 99] first apply to the Sheriff and procure from the tax collector a license and pay an annual license fee of $50.00. The palpable difference in amount impels a reconsideration as the presumptions of law indulged in by the Appellate Court, are inapplicable. In any event, defendants tendered the $50.00 to respondent Sheriff, which was refused. That any tender or applications made of license by one engaged in foreign commerce is refused.

III

The Appellate Court failed to reconsider that in a prior Federal case between the same parties involving the same licenses and which constitutes an estoppel in evidence, the United States District Court, in its decision holding a portion of the ordinance unconstitutional, did not hold that an appeal to the San Diego Board of Supervisors or State Courts, was a prerequisite to a valid attack on the constitutionality of the ordinance. That said decision forms, by stipulation, a part of the case at bar, and is consistent with the defendants' theory that a license from the County of San Diego is not essential to engage in foreign commerce.

IV

The Appellate Court assumed that the only political subdivision requiring "fitness to operate taxicabs on the [fol. 100] State highways" as the County of San Diego. The record indicated that defendants were possessed of Chauffeurs' Cards permitting the driving of taxicabs for hire, by the Chief of Police of the City of San Diego, in addition to being possessed of Chauffers' licenses issued by the Department of Motor Vehicles of the State of California, as well as Motor Vehicle Transportation Licenses which authorizes the defendants and each of them to engage in transportation of persons or property for hire or compensation over the public highways of the State of California.

Defendants aver that said Superior Court of the State of California in and for the County of San Diego, Appellate Department, is the highest court of the State of California in which said decision could be had. That the judgment was rendered in a suit involving a case or controversy, that the case presents a substantial Federal question, that the Federal question sought to be reviewed was properly raised and preserved in said Court and does not rest upon a State ground.

Wherefore, defendants hereinabove pray that the final decree of the Superior Court of the State of California in and for the County of San Diego, Appellate Department, be reversed, and for such other relief as the Court may deem fit and proper.

Manuel Ruiz, Jr., Attorney for Appellants, 704 South Spring Street, Los Angeles 14, California.

[File endorsement omitted.]

[fols. 101-138] AFFIDAVIT OF SERVICE BY MAIL—Omitted in printing

[fol. 139] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS RELIED ON AND DESIGNATION OF RECORD TO BE PRINTED—Filed July 12, 1951

Pursuant to Rule 13, Paragraph IX of this Court, appellants adopt for their Statement of Points upon which they intend to rely on the Appeal before this Court, the points contained in the Assignment of Errors as well as those contained in the Amplification of Statement as to Jurisdiction heretofore filed.

Appellants designate the entire record as filed in the above entitled case for printing by the Clerk of this Court.

Morris Lavine, Counsel for Appellants.

[File endorsement omitted.]

[fol. 140] Affidavit of Service by Mail omitted in printing.

[fol. 141] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 165

[Title omitted]

ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS—October 8, 1951

On Consideration of the motion for leave to proceed herein *in forma pauperis*,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

[fol. 142] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 165

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—October 8, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsed on Cover:] In forma pauperis. File No. 55,358. California Superior Court in and for the County of San Diego. Term No. 165. Norman H. Buck and Miguel R. Guerra, Appellants, vs. The People of the State of California. Filed July 2, 1951. Term No. 165 O.T. 1951.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 165

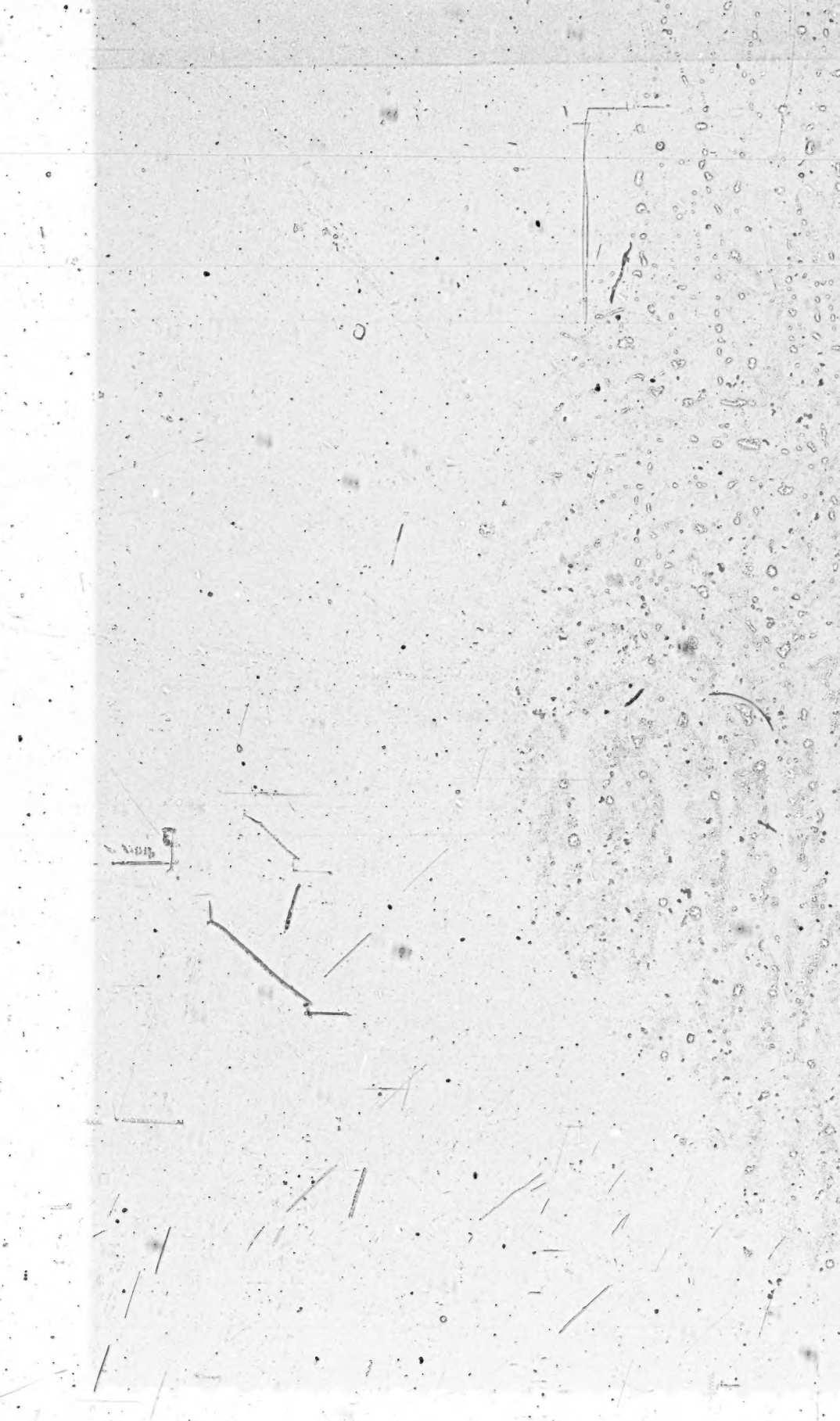
NORMAN H. BUCK AND MIGUEL R. GUERRA,
Apellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Appellee

OPENING BRIEF ON BEHALF OF APPELLANTS

MANUEL RUIZ, JR.,
MORRIS LAVINE,
Counsel for Appellants.



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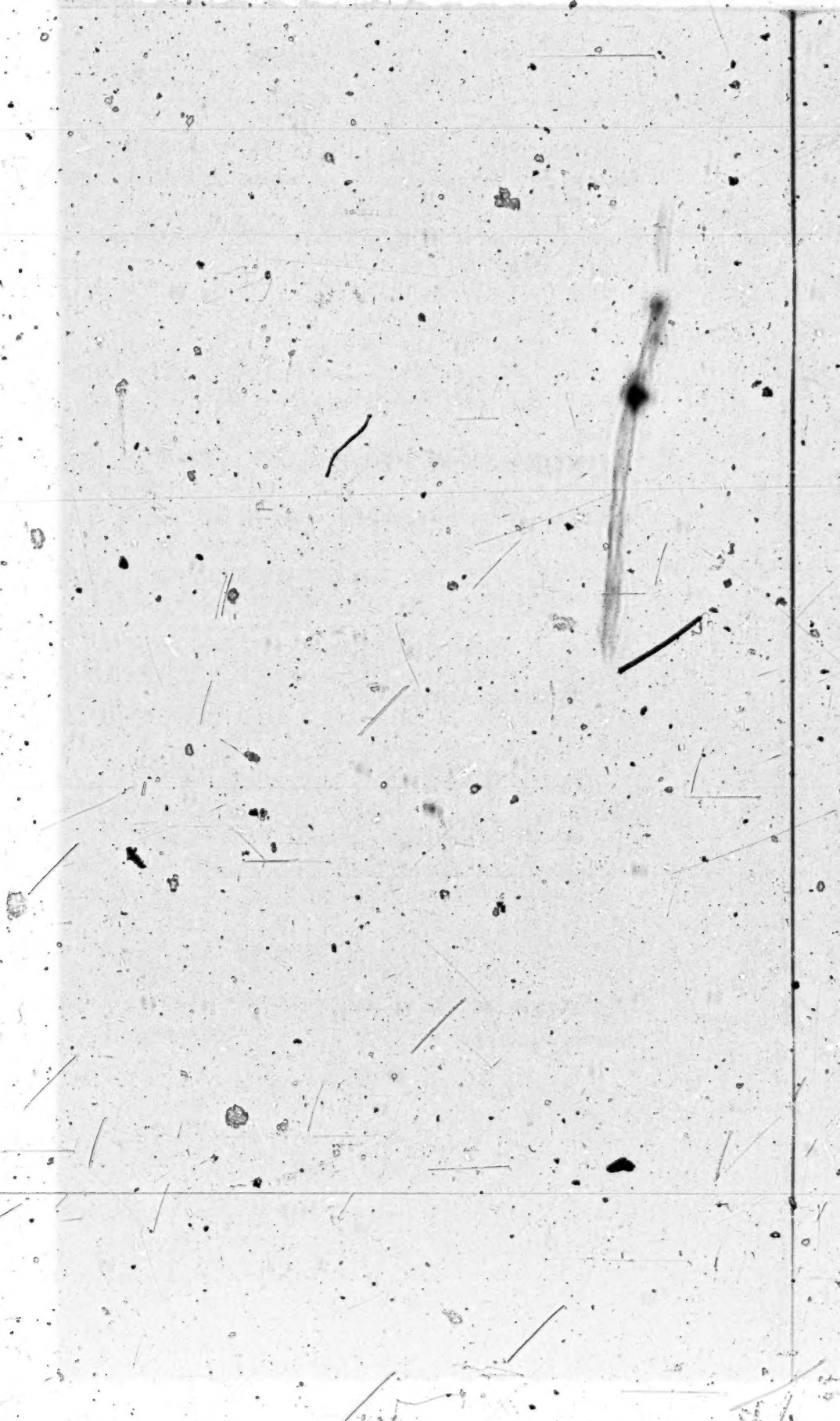

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 165

NORMAN H. BUCK AND MIGUEL R. GUERRA,
Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Appellee

OPENING BRIEF ON BEHALF OF APPELLANTS

Opinion Below

The opinion of the Justice Court is published on page 52 of the Transcript of Record; the opinion of the Appellate Department of the Superior Court of the State of California in and for the County of San Diego is published on page 31 of the Transcript of Record. The Petition for Rehearing was denied January 5, 1951 without opinion (R. 45).

Jurisdiction

Jurisdiction is conferred by Section 1254(2) and Section 2101(c) Title 28 U. S. Codes.

The judgment of the Court of Appeal was rendered Dec. 14, 1950 (R. 31). A petition for rehearing was duly and

regularly filed Dec. 21, 1950 (R. 36), and denied January 5, 1951 (R. 45). Notice of Appeal was filed January 15, 1951 (R. 46). The Order allowing the appeal was made by the Presiding Justice of the Appellate Department of the Superior Court (R. 55). This Court entered an order denoting probable jurisdiction on October 8, 1951 (R. 59).

Statutes Involved

Article I, Section 8, of the Constitution of the United States provides as follows:

> "Powers granted to Congress. (3) To regulate commerce with foreign nations, and among the several States, and with the Indian Tribes."

Ordinance No. 464 (New Series) of the County of San Diego, as follows:

> "Ordinance No. 464 (New Series)
>
> An Ordinance Regulating the Operation of Taxicabs Within the Unincorporated Area of San Diego County, and Requiring Permits and Licenses Therefor. (As Amended by Ordinances Nos. 609 (New Series), 958 (New Series), and 964 (New Series)
>
> The Board of Supervisors of San Diego County do ordain as follows:
>
> Section 1. As used in this ordinance, "taxicab" means a motor vehicle, as that term is defined in the Vehicle Code, used for the transportation of passengers for hire when driven by the owner or by an agent of the owner at rates per mile, per trip, per hour, per day, per week, per month, or per other period of time, which vehicle is routed under the direction of the passengers or other persons hiring such vehicle.
>
> Section 2. As used in this ordinance, "taxicab operator" means a person, firm, partnership, or corporation engaged in the business of running, driving,

or operating one or more taxicabs and carrying passengers in such taxicab or taxicabs for hire within the unincorporated area of the County of San Diego.

Section 3. As used in this ordinance, "taxicab driver" means an individual who drives or is in actual physical control of a taxicab in which passengers are carried for hire within the unincorporated area of the County of San Diego.

Section 4. *(Amended by Ord. No. 958 adopted 4-10-50, and amended again by Ord. No. 964 (New Series) adopted 5-22-50 to read as follows:)* Within 10 days from the effective date of this ordinance every taxicab operator shall apply to the sheriff and procure from the Tax Collector a license and pay an annual license fee of $50.00 (plus $1.00 per year per taxicab), which shall be paid by the applicant to the Tax Collector and shall be due on the first day of June of each year. Licenses issued subsequent to the first day of September, the first day of December, and the first day of March shall be issued at a quarterly reduction of $12.50 per quarter.

The sheriff may in his discretion direct the Tax Collector to issue a temporary permit pending final action on such application for license. If a license is revoked the license shall be forthwith surrendered to the sheriff, who shall thereupon deliver to the licensee a requisition for the refund of the unearned portion of the license fee, calculated to the nearest month. The sheriff may deny the application or having issued the license may revoke the same if the sheriff shall determine that the applicant or taxicab operator is of bad moral character or is guilty of violation of any of the provisions of this ordinance or of any lawful regulation promulgated pursuant thereto or has been convicted of any offense involving moral turpitude.

Applications for taxicab operator's licenses shall be filed with the sheriff on a form furnished by the sheriff which, when completed, will contain full personal information concerning the applicant, type of business to be conducted and description of equipment to be used.

Any person whose taxicab operator's license shall have been revoked or renewal thereof is refused by the sheriff may within ten days after receipt of notice thereof appeal to the Board of Supervisors for a hearing thereon and the decision of the Board of Supervisors shall be final. If no appeal is taken within ten days the action by the Sheriff shall be final.

To facilitate the hearing and disposition of such appeal, the Board of Supervisors may appoint a referee to take testimony and to report his findings and recommendations to the Board. If the Board appoints a county officer or county employee to act as referee, he shall serve as such referee without any additional compensation. All time spent as a referee shall be considered as time spent by such officer or employee in performing the duties of his position.

Section 5. The Tax Collector shall not issue a taxicab operator's license or permit unless and until instructed to do so by the sheriff.

Section 6. Every applicant for a taxicab operator's license shall file his application with the sheriff on a form to be furnished by the sheriff. The application shall be signed by the applicant and shall contain:

a) Name and address of the applicant.

b) Kind and amount of public liability and property damage insurance covering each vehicle to be used for the acceptance or carriage of passengers for hire within the County.

c) Owner's trade name and business address.

d) Number of vehicles to be used for accepting or carrying passengers for hire within the county, their make, model (year) and seating capacity.

e) Schedule of rates to be charged.

f) Such further information as the sheriff may require.

Section 7. The sheriff shall not order the issuance of any taxicab operator's license or temporary permit until the applicant first files with the sheriff a policy or certificate of insurance, which policy or certificate

shall comply with the provisions of this ordinance, and shall first be approved by the district attorney.

Section 8. The policy of insurance required before a taxicab operator's license or permit can be issued shall insure the public against any loss or damage for which the operator is legally liable that may result to any person or property from the operation of any taxicab used by the taxicab operator in his business as such. The maximum amount of recovery in such policy shall not be less than the following sums:

a) For the injury to any one person, or the death of any one person in any one accident, $10,000.

b) For the injury to two or more persons, or the death of two or more persons, or the injury to one person or more, and the death of one person or more, in any one accident, $20,000.

c) For the injury or destruction of property in any one accident, $5,000.

Section 9. *(Amended by Ord. No. 609 (New Series) adopted 5-12-47; and again amended by Ord. 958 (new Series) adopted 4-10-50, to read as follows:)* It shall be unlawful for any person to drive or to be in actual physical control of any taxicab in the unincorporated area of the County of San Diego without first obtaining a permit in writing so to do from the sheriff of the County of San Diego.

Applicants for such permits shall file applications therefor with the sheriff of the County of San Diego on a form furnished by the sheriff which, when completed, will contain full personal information concerning the applicant.

Upon obtaining a permit as herein required the holder of such permit shall be entitled to an identification card of such design, and bearing such number as the sheriff may prescribe, upon payment of a fee of $1.00 annually, therefor, which shall be paid by the applicant to the tax collector and shall be due on the 1st day of June of each year. Such card shall be carried

by the permittee during all business hours and shall not be transferable.

Each applicant for a permit shall be examined by the sheriff as to his knowledge of the provisions of this ordinance, the Vehicle Code, traffic regulations and the geography of the county, and if the result of the examination is unsatisfactory he shall be refused a permit. The sheriff may deny the application or having issued the permit may revoke the same if the sheriff shall determine that the applicant or taxicab driver is of bad moral character or is guilty of violation of any of the provisions of this ordinance or of any lawful regulation promulgated pursuant thereto or has been convicted of any offense involving moral turpitude.

The sheriff may in his discretion direct the tax collector to issue a temporary permit pending final action on such applicant for permit. If a permit is denied or revoked, the permit shall be forthwith surrendered to the sheriff. No portion of the fee for a temporary or permanent taxicab driver's permit shall be returnable upon denial or revocation of such permit.

Any person whose taxicab driver's permit shall have been revoked or renewal is refused by the sheriff, may within ten (10) days after receipt of notice thereof, appeal to the Board of Supervisors for a hearing thereon and the decision of the Board of Supervisors in this regard shall be final. If no appeal is taken within ten days, the action of the sheriff shall be final.

To facilitate the hearing and disposition of such appeal, the Board of Supervisors may appoint a referee to take testimony and to report his findings and recommendations to the Board. If the Board appoints a county officer or county employee to act as referee, he shall serve as such referee without any additional compensation. All time spent as a referee shall be considered as time spent by such officer or employee in performing the duties of his position.

Section 10. At time of filing application, every taxicab operator operating in the unincorporated area of

the County of San Diego shall file with the sheriff a true and correct statement of the rates to be charged for the transportation of passengers in any and all vehicles for hire operated by said operator, and such operator shall not change or modify said rates in any manner without first obtaining written approval from the sheriff and the filing of said modified or changed rates with the sheriff.

There shall be displayed in the passenger compartment of each taxicab in full view of the passengers a card not less than four inches by six inches in size, which shall have plainly printed thereon the name of the operator, or the fictitious name under which said operator operates, the business address and telephone number of said operator, and a correct schedule of the rates to be charged for conveyance in said vehicle.

Section 11. *(Amended by Ord. No. 958 (New Series) adopted 4-10-50, to read as follows:* Every taxicab operator shall keep such records and make such reports as the sheriff may require. The sheriff may adopt reasonable regulations not inconsistent with the provisions of this ordinance and the same shall be in force from and after their approval by resolution of the Board of Supervisors.

Section 12. It shall be unlawful for any person to solicit passengers for taxicabs in any public street, sidewalk, highway or place in the unincorporated area of the County of San Diego except the driver thereof when seated within the vehicle.

Section 13. Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by forfeiture of his permit, and by a fine not exceeding Five Hundred Dollars ($500), or by such forfeiture and imprisonment in the county jail for not more than six (6) months, or by both such forfeiture, fine and imprisonment.

Section 14. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held

to be unconstitutional, the Board of Supervisors hereby declares that it would have passed this ordinance irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases thereof be declared unconstitutional.

Section 15. This ordinance shall take effect and be in force at the expiration of thirty days from and after its passage, and before the expiration of fifteen days after its passage it shall be published once, with the names of the members voting for and against the same, in the San Diego Union, a newspaper of general circulation published in the County of San Diego.

Passed, approved and adopted this 1st day of April, 1946.

(S.) DAVID W. BIRD,
Chairman of the Board of Supervisors
of the County of San Diego,
State of California.

The above ordinance was adopted by the following vote:

Supervisor DeGraff Austin, voting "Aye"
Supervisor David W. Bird, voting "Aye"
Supervisor James A. Robbins, voting "Aye"
Supervisor Dan Rossi, voting "Aye"
Supervisor Dean E. Howell, voting "Aye"

Attest my hand and the seal of the Board of Supervisors this 1st day of April, 1946.

J. B. McLEES,
County Clerk and ex officio Clerk
of the Board of Supervisors.

By: (S.) M. NASLAND,
Deputy."

(R. 46-52)

Short Statement of the Facts

The appellants Norman H. Buck and Miguel H. Guerra are American citizens, who were engaged in the taxicab business, transporting passengers for hire, from the Federal Zone within the territory of Lower California, Republic of Mexico, to various points within the United States of America.

Ordinance 64 of the County of San Diego provides for the licensing of proprietors of taxicab businesses, designated in the ordinance as "taxicab operators," and for the licensing of drivers employed by these operators, and makes it unlawful for the operation of a taxicab in the unincorporated territory of San Diego County without a license (regardless of whether the passengers are to be let out in San Diego County, or elsewhere, or whether the cab is merely passing through the county.) Section 9 of the Ordinance further provides that the sheriff may revoke the permit if the sheriff thinks the cab driver is unfit to drive a cab. The sheriff is permitted to publish and promulgate certain rules and regulations governing the operation and use of taxicabs and cars for hire in the unincorporated area of San Diego County, California.

Regulation No. 6 provides in part:

> "Taxicabs licensed in counties other than San Diego will not be permitted to pick up passengers in San Diego County; no taxicab or car for hire licensed by this office will be permitted to pick up passengers outside the limits of San Diego County."

The appellants herein were arrested (R. 11-10). The appellants were charged in a complaint with having operated a taxicab, to-wit, a 1950 Ford Sedan, bearing a California Commercial State License No. 1199, in the unincorporated area of the County of San Diego, on Highway No.

101 in San Ysidro, without first having obtained a written permit from the sheriff of San Diego County, authorizing the defendants so to do. (R. 8, R. 9). A temporary restraining order and a preliminary injunction had been secured against a prior ordinance. (R. 11, 12). This ordinance was amended to its present form. Subsequent to the injunction, the appellants were advised by their counsel to continue their taxicab activities, but to restrict the same solely and exclusively to the picking up and discharging of passengers at points between the Mexican Federal Zone, within the Republic of Mexico, and points in the United States without the unincorporated area of the County of San Diego. (R. 12). And, at the time of their arrest in this case, were carrying passengers from the Republic of Mexico and merely passing through the County of San Diego, for the sole purpose of discharging the passengers on a continuous passage from the Republic of Mexico to places other than the unincorporated area of the County of San Diego within the State of California. (R. 13).

Prior to each arrest, the Office of the Sheriff received a telephone call from the defendants' taxicab competitor stationed on the American side of the border advising the sheriff's office that each defendant was leaving Mexico with passengers to the United States. At the place of arrest, the taxicab competitors of the defendants, stationed on the American side of the border, who would follow the defendants to the place of arrest, would have the passenger load of each defendant transferred to the said competitor's taxicab for hire and would take them to the passenger's designation in the United States.

The Ordinance requires the payment of a fee of $1.00 to the sheriff of San Diego County, and $50.00 to the Tax Collector for each taxicab, in June of each year. (R. 47).

The sheriff is given unlimited power to direct the Tax Collector to issue a temporary permit, to revoke the license, deny the application, or having issued the license revoke the same if the sheriff shall determine that the applicant, or taxicab operator, is of bad moral character or is guilty of violation of any of the provisions of the ordinance or of any lawful regulation promulgated pursuant thereto, or has been convicted of any offense involving moral turpitude. (R. 47).

The appellants were adjudged guilty and ordered to pay a fine of $250.00 or serve one day in jail for each $5.00 of time not paid. (R. 2). $200.00 of said fine is suspended for two years on condition that the defendant does not violate the ordinance during that period. (R. 2).

The Appellate Department of the Superior Court of the State of California in and for the County of San Diego, the last court which could review the ordinance on appeal, found the ordinance valid and sustained the conviction. (R. 31).

Locale

San Diego County is bounded on the west by the Pacific Ocean, and on the South by the Republic of Mexico. By predeliction it is one of two California counties which can control the only access between corporate body politics of the State of California, and sister States, to the Territory of Lower California, Mexico.

The thriving community of Tijuana is located directly across the border, in Mexico. It is the terminal of several Mexican airlines, and international commerce in its plenary definition exists between Mexico and the United States at this point, which as a necessary incident must pass through

the unincorporated County area of San Diego. The majority of traffic in passengers and goods originates and terminates in places other than said unincorporated area. Appellants, taxicab operators are not engaged in doing business within San Diego County. They neither pick up nor discharge international passengers within said County. Appellants, who are natural born American citizens, aver that they are engaged in foreign commerce in said taxicab business which is a useful one, and essential to the free intercourse of said international traffic, which business they have developed over a period of years, including the training essential to the conducting of said occupation for a livelihood of themselves and their respective families.

Contentions of Parties

Appellee, the County of San Diego, contends by ordinance that it is unlawful for any person to drive, or be in actual physical possession of any taxicab in the unincorporated area of the County of San Diego without first having obtained a County Permit, in writing, from the office of the Sheriff of said County. Appellants, who do not stop within said County in plying their business, contend that the said County may pass a valid regulation pursuant to its Police Powers, provided that said regulation does not amount to a burden or prohibition on foreign commerce. That if the regulation amounts to an unreasonable burden or prohibits foreign commerce, either on its face or in practice, that the same constitutes a violation of the Federal Constitution, and that the Appellants cannot be found guilty of a crime, by the enforcement of such an invalid regulation.

Appellants have been twice arrested and incarcerated, by the enforcement of the San Diego ordinance. The first time of their arrest, they procured a temporary injunction issued by the United States District Court, Southern District and

Division of California, and in attacking the Constitutionality of the ordinance, said Court found,

> "Said regulation is void as an attempted interference with or prohibition of interstate and foreign commerce insofar as it purports to restrict interstate or foreign commerce . . ."

The Court in the judgment (Tr. p. 23) further said,

> "It is hereby ordered, adjudged and decreed . . . that the portion of Regulation 6 of rules and regulations promulgated by the Sheriff of San Diego County governing the use and operation of taxicabs and cars for hire in the unincorporated area of San Diego County, reading as follows:
>
> > "Taxicabs licensed in counties other than San Diego County will not be permitted to pick up passengers in San Diego County; no taxicab or car for hire licensed by this office will be permitted to pick up passengers outside the limits of San Diego County,"
>
> is unconstitutional and void."

As a consequence of said decision the appellee did not proceed with the criminal prosecution of the action against appellants who were at the time doing a local and foreign business, but thereupon, on its own motion dismissed the action.

Inasmuch as there was a conflict of evidence before the local United States District Court as to whether the appellants did both a local and foreign business, by picking up passengers and discharging them, within the unincorporated area of San Diego, as well as without said area, and the Court so found. Appellants thereafter restricted their business activities to foreign commerce only, without discharging or picking up passengers within the County area.

The County of San Diego thereafter deleted from the Ordinance the regulation which had been held as void and

modified another portion of the Ordinance which was likewise held to be unconstitutional, but which had no reference to the problem of foreign commerce.

The Appellee through the office of the Sheriff after making said changes in the law arrested and incarcerated Appellents a second time. It is contended by the Appellants that the Appellee simply changed the ordinance to appear *valid on its face*, but that in order to nevertheless circumvent the Constitution of the United States, Appellee arrested Appellants the second time under color of a valid law, by the unconstitutional enforcement of the same.

Appellants then found themselves for the first time, before the State Courts, and although it was stipulated in the facts that they were solely engaged in foreign commerce, they were found guilty of a crime, by a Township Justices Court, which Court in its opinion said:

> "The defendants contend that the Sheriff, under color of authority, unlawfully discriminated against the defendants to suppress competition. This Court Will Not Consider the Question."

Since the State Court of first instance then, refused to consider the question, appellants appealed to the highest State Court of appellate jurisdiction. The decision of said tribunal affirmed the lower Courts decision. The assignment of errors as to said decision for purposes of this appeal, appear at Page 55, Transcript of the Record.

> The Lower Court Failed to Consider and Pass upon the Point That the Appellants and Each of Them Were Deprived of Their Constitutional Rights, under Color of Law.

In the opinion of the State Court the following appears verbatim:

> "According to the agreed statement of facts, the defendants were arrested while driving taxicabs on the

highways in unincorporated territory in San Diego County. The defendants were not stopping to pick up or discharge passengers, using the highways only as a means of transporting passengers for hire from the Republic of Mexico, on their way to a destination outside of the unincorporated areas of the County of San Diego. This was their usual course of business. When not in use, the taxicabs were stationed in Tijuana, Republic of Mexico, and all passenger service originated there. The defendants are American citizens."

"Each of the defendants had applied for and been denied the license required by the ordinance in question. One only of the defendants appealed from the Sheriff's decision to the Board of Supervisors, but his appeal was denied. No one of the defendants has sought in the (State) courts a review of the administration of the action." (Tr. pg. 32, fol. 57.)

San Diego County will not issue a license to anyone engaged in foreign commerce in the fashion of defendants, and will arrest anyone traversing the County.

From the stipulated facts, the following appears verbatim:

"That at the time of each arrest, the arresting officers ascertained that the defendants had picked up their passengers in Mexico, and were driving through the unincorporated area of San Diego County to discharge said passengers without the unincorporated limits of San Diego County. That prior to each arrest, the Office of the Sheriff received a telephone call from the defendants' taxi competitors stationed on the American side of the Border, advising said Sheriff's Office that each defendant was leaving Mexico with passengers to the United States. That based on said information, the Sheriff's Office intercepted the defendants in County territory and arrested them. At the place of arrest, taxi competitors of the defendants, stationed on the American side of the Border and who would follow the defendants to the place of arrest, would have the

passenger load of each defendant transferred to said competitors' taxicab and for hire would take them to the passenger's destination.'"

Under the facts, therefore, an American or Mexican citizen, whose destination in the United States was other than the limits of the County of San Diego, had to first enter into the United States, from the Republic of Mexico, in order to get taxicab service from taxicabs licensed by the County of San Diego, for if such passenger took a taxicab on the Mexican side with the competitors of those licensed by the County of San Diego, arresting officers on the American side would receive information that they had become passengers. When said passengers passed the border, a telephone call from appellants taxi competitors stationed on the American side of the Border would advise the Sheriff's Office that they were leaving Mexico. That thereafter based on said information, the Sheriff's Office would intercept their driver in County territory and arrest him, whereupon at the place of arrest, taxi competitors of the appellants, stationed on the American side of the Border and who would follow the appellants to the place of arrest, would have the passenger load of the arrested competitor transferred to the informing competitors taxicab, who for hire would then take the outraged passenger to his destination.

Under the above statement of facts, the Superior Court of San Diego County, from which this appeal has been taken, chose not to enter into a discussion, of whether the same did or did not constitute an undue or discriminatory burden upon foreign commerce, but instead summarily stated that a police regulation of the County was in existence. Under the authority of the *Bob-Lo Excursion Co.* vs. *Michigan* case, 333 U. S. 28, the State could make such laws which were local in nature, as it desired.

Said authority upon which the State Court predicated its decision involved Civil Rights and in no manner concerned the uniformity essential for the movement of vehicles in foreign commerce. The special local interests involved in said case did not involve international traffic or a continuation thereof, but was a specially insulated matter, involving a problem of segregation and the duty of carriers to provide equal service to all.

In the event the ordinance pursuant to which the defendants were charged and arrested appears on its fact to be consistent with the Federal Constitution, the Court must still determine whether the acts of the Sheriff of the County of San Diego have exceeded the local application of the ordinance and, whether under the color or pretense of said ordinance, the Sheriff has nevertheless violated the Federal law and arrested the defendants while lawfully engaged in foreign commerce.

In case of *Home Tel. & Tel. Co.* vs. *Los Angeles*, reported in 227 U. S. 278, is authority for the point of what is meant by a wrong done by a state officer misusing the authority of the state with which he is clothed.

In other words, if a State Officer does an unconstitutional act, under such circumstances inquiry into whether the State has authorized the wrong is irrelevant.

In said case, the attorneys representing the City of Los Angeles asserted that "no power existed in a Federal Court to consider the subject until by final action of an appropriate State Court it was decided that such acts were authorized by the State and were therefore not repugnant to the State Constitution." This argument fell by the wayside.

This court therefore, without considering the State aspect of the case, may forthwith apply the Federal Law.

Said the court at page 287:

"Here again the settled construction. . . . is that it presupposes the possibility of an abuse by a state officer or representative of the powers possessed and deals with such a contingency. "It provides, therefore, for a case where one who is in possession of state power uses that power to the doing of the wrongs which the Amendment forbids even though the consummation of the wrong act may not be within the powers possessed if the commission of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer . . . where an officer or other representative of a State in the exercise of the authority with which he is clothed misuses the power possessed to do a wrong forbidden . . . inquiry concerning whether the State has authorized the wrong is irrelevant and the Federal judicial power is competent to afford redress for a wrong by dealing with the officer and the result of his exertion of power."

(See Pg. 5, Paragraph VII, Stipulated Facts).

The opinion continues on page 288, as follows:

"That is to say, a state officer cannot on the one hand as a means of doing a wrong forbidden by the Amendment proceed upon the assumption of the possession of state power and at the same time for the purpose of avoiding the application of the Amendment, deny the power and thus accomplish the wrong."

The Lower Court Stated That an Annual Fee of $1.00 for Administrative Costs on Foreign Commerce Was Not Unreasonable But Failed to Pass Upon the Reasonableness of the $50.00 Annual Fee About Which the Appellants Complained.

In the San Diego County Ordinance, appears the following language:

"Within 10 days from the effective date of this ordinance every taxicab operator shall apply to the

Sheriff and procure from the Tax Collector a license and pay an annual license fee of $50.00 (plus $1.00) per year per taxicab. . . ."

Despite the fact that appellants argued and submitted authorities of law, upon the question of the annual license fee of $50.00, before the State Court, said Court, in its opinion (Tr. pg. 34) disposed of the point with the following language:

"In this respect the ordinance exacts of the defendants at the point where they complain an annual fee of $1.00 which is no more than the cost of its administration. Defendants offer no evidence to the contrary (citing cases). One attacking as unreasonably burdening commerce the validity of a regulatory or taxing measure . . . has the burden of showing a want of reasonable relation to the increased cost of maintenance and policing due to such traffic."

Questions Presented by This Appeal

I

WHETHER A COUNTY ORDINANCE OF THE COUNTY OF SAN DIEGO REQUIRING TAXICABS PASSING THROUGH THE UNINCORPORATED AREA OF THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA TO OBTAIN A PERMIT IN WRITING FROM THE SHERIFF OF THE COUNTY OF SAN DIEGO, TO PAY AN APPLICATION FEE OF $1.00 AND A LICENSE FEE TO $50.00, TO BE EXAMINED BY THE SHERIFF AS TO THE APPLICANT'S KNOWLEDGE OF THE PROVISIONS OF THE ORDINANCE, KNOWLEDGE OF THE VEHICLE CODE, TRAFFIC REGULATIONS, AND GEOGRAPHY OF THE COUNTY, AND PERMITTING THE SHERIFF TO GRANT OR DENY THE PERMIT UNDER CERTAIN SPECIFIED CONDITIONS, IS IN VIOLATION OF ARTICLE I SECTION 8 OF ARTICLE 3 OF THE CONSTITUTION OF THE UNITED STATES WHEN APPLIED TO TAXICABS CARRYING PASSENGERS FROM THE REPUBLIC OF MEXICO TO PLACES IN THE UNITED STATES OTHER THAN THE COUNTY OF SAN DIEGO, ALTHOUGH THE CAB HAS TO PASS THROUGH THE COUNTY OF SAN DIEGO TO REACH ITS DESTINATION.

II

WHETHER SUCH AN ORDINANACE INHERENTLY AND AS CONSTRUED AND APPLIED IN THIS CASE, CONSTITUTES AN UNCONSTITUTIONAL BURDEN ON INTERNATIONAL COMMERCE WHERE THE CAB WAS MERELY PICKING UP PASSENGERS IN MEXICO AND BRINGING THEM THROUGH THE COUNTY OF SAN DIEGO TO OTHER DESTINATIONS OF THE UNITED STATES, AND WERE NOT IN ANYWISE VIOLATING ANY LAW, OR OTHERWISE DOING ANYTHING WRONG OTHER THAN THAT THE DRIVER DID NOT HAVE A LICENSE UNDER THE SAN DIEGO COUNTY ORDINANCE NO. 464.

III

WHETHER A COUNTY MAY PASS AN ORDINANCE REQUIRING EVERY VEHICLE THAT PASSES THROUGH IT IN INTERNATIONAL COMMERCE AND CARRYING PERSONS FOR HIRE FROM THE OTHER COUNTRY TO SOME DESTINATION IN THE UNITED STATES MAY BE REQUIRED TO HAVE THE DRIVER LICENSED AND TAXED WHEN IT PASSES THROUGH THE COUNTY OF SAN DIEGO TO HIS NECESSARY DESTINATION.

WHETHER THE ORDINANCE, INHERENTLY AND AS CONSTRUED AND APPLIED IN THIS CASE, WAS UNDULY DISCRIMINATORY.

IV

WHETHER THE COMMERCE BETWEEN NATIONS, WHICH HAS BEEN REGULATED BY THE NATIONAL TRANSPORTATION POLICY ACT (49 U.S.C.A. 301-327), SECTION 303(b) AND CODE OF FEDERAL REGULATIONS PARTS 190-197, SO AS TO EXCLUDE LOCAL COUNTY ORDINANCES AND PLACING UNREASONABLE BURDEN UPON INTERNATIONAL COMMERCE.

V

WHETHER THE ORDINANCE, CONTAINING NO SPECIAL PROHIBITIONS RELATING TO POLICE POWERS OR REASONABLY RELATED TO ITS PURPOSE IS UNCONSTITUTIONAL.

Specification of Errors

The appellants assign each of the questions presented as its Specification of Errors.

ARGUMENT

The statute, inherently, and as construed and applied in this case, unreasonably burdens commerce between the friendly Republic of Mexico and the United States of America.

Here is an ordinance which required the appellants, carrying passengers from the friendly Republic of Mexico to destination in the United States other than the Republic of Mexico and to destinations not in the County of San Diego, to obtain a permit and pay a license fee to the County of San Diego, and to subject the drive to the burden of satisfying the sheriff, a single officer, as to a number of things.

Such a statute unduly burdens commerce. It is not contended by the County of San Diego that the tax measure was for the purpose of maintenance in policing due to traffic, nor is it contended that the ordinance had this purpose. Its exaction discriminates against interstate commerce. It does not apply alike to local and interstate and national commerce.

Aero Mayflower Transit Co. v. *Board of Railroad Commissioners*, 332 U. S. 495, 92 L. Ed. 99.

As construed by the California Court, the principal requirement of the Ordinance is that the carrier's operator be of good moral character (R. 35). But, this requirement is also a requiremen of the State of California in issuing a State Driver's License.

It has always been held that goods passing in transit from one state to another may not be unduly burdened and may not be subject to local inspection.

Ever since *Gibbons* v. *Ogden*, 9 Wheat. (U. S.) 1, 6 L. Ed. 23, the States of the United States have not been deemed to

have authority to impede substantially the free flow of commerce from state to state, or to regulate those phases of the national commerce which because of the need of national uniformity demanded that the regulation, if any, be prescribed by a single authority.

Cooley v. *Board of Wardens*, 12 How. U. S. 319, 13 L. Ed. 1004;

Leisy v. *Hardin*, 135 U. S. 100, 108, 109, 34 L. Ed. 128, 132;

3 Interstate Commerce Reports 36 Minnesota late cases (*Simpson* v. *Shepard*, *supra*, 230 U. S. 399, 400, 57 L. Ed. 1541, 1542).

Edwards v. *California*, 314 U. S. 160, 167, 86 L. Ed. 119.

The same rule should apply in Interstate Commerce—more so with the friendly Republic of México. The principle that without controlling congressional action a State may not regulate interstate commerce so as substantially to effect its flow or deprive it of needed uniformity in its regulation is not to be avoided by "simply invoking the convenient apologetics of the police power," *Kansas Southern R. Co.* v. *Kaw Valley Drainage Dist.*, *supra* (233 U. S. 79, 58, L. Ed. 859, 34 S. Ct. 564); *Buck* v. *Kuykendall*, 267 U. S. 307, 315, 69 L. Ed. 623, 626, 45 S. Ct. 324, 38 A. L. R. 286.

Southern Pacific Co. v. *Arizona*, 325 U. S. 761, 779. In the case of *Southern Pacific Co.* v. *Arizona*, the court further states:

> "In the Kaw Valley Drainage Dist. Case the Court held that the state was without constitutional power to order a railroad to remove a railroad bridge over which its interstate trains passed, as a means of preventing floods in the district and of improving its drainage, because it was 'not pretended that local welfare needs the removal of the defendants' bridges at the expense of the dominant requirements of commerce with other

states, but merely that it would be helped by raising them.' And in Seaboard Air Line R. Co. v. Blackwell, 244 U. S. 310, 61 L. Ed. 1160, 37 S. Ct. 640, L. R. A. 1917F 1184, it was held that the interference with interstate rail transportation resulting from a state statute requiring as a safety measure that trains come almost to a stop at grade crossings, outweigh the local interest in safety, when it appeared that compliance increased the scheduled running time more than six hours in a distance of one hundred and twenty-three miles. Cf. Southern R. Co. v. King, 217 U. S. 524, 54 L. Ed. 868, 30 S. Ct. 594, supra, where the crossings were less numerous and the burden to interstate commerce was not shown to be heavy; and see Erb v. Morasch, 177 U. S. 584, 44 L. Ed. 897, 20 S. Ct. 819.

"Similarly the commerce clause has been held to invalidate local 'police power' enactments fixing the number of cars in an interstate train and the number of passengers to be carried in each car, South Covington & C Street R. Co. v. Covington, supra (235 U. S. 543, 59 L. Ed. 352, 35 S. Ct. 158, L. R. A. 1915F 792, P. U. R. 1915A 231), regulating the segregation of colored passengers in interstate trains, Hall v. DeCuir, supra (95 U. S. 488, 489, 24 L. Ed. 548), requiring burdensome intrastate stops of interstate trains, Illinois C. R. Co. v. Illinois, 163 U. S. 142, 41 L. Ed. 107, 16 S. Ct. 1096; Cleveland, C. C. & St. L. R. Co. v. Illinois, 177 U. S. 514, 44 L. Ed. 868, 20 S. Ct. 722; Mississippi R. Commission v. Illinois C. R. Co., 203 U. S. 335, 51 L. Ed. 209, 27 S. Ct. 90; Herndon v. Chicago, R. I. & P. R. Co., 218 U. S. 135, 54 L. Ed. 970, 30 S. Ct. 633; St. Louis-San Francisco R. Co. v. Public Serv. Commission, 261 U. S. 369, 67 L. Ed. 701, 43 S. Ct. 380, requiring an interstate railroad to detour its through passenger trains for the benefit of a small city, St. Louis & S. F. R. Co. v. Public Serv. Commission, 261 U. S. 369, 67 L. Ed. 701, 43 S. Ct. 380, supra, interfering with interstate commerce by requiring interstate trains to leave on time, Missouri K. & T. R. Co. v. Texas, 245 U. S. 484, 62 L. Ed. 419, 38 S. Ct. 178, P. U. R. 1918B 602, regulating car distribu-

tion to interstate shippers, St. Louis Southwestern R. Co. v. Arkansas, 217 U.S. 136, 54 L. Ed. 698, 30 S. Ct. 476, 29 L. R. A. (N. S.) 802, or establishing venue provisions requiring railroads to defend accident suits at points distant from the place of injury and the residence and activities of the parties, Davis v. Farmers Co-op. Equity Co., 262 U. S. 312, 67 L. Ed. 996, . . . South Carolina State Highway Dept. v. Barnwell Bros. supra (303 U. S. 184, 185, note 82 L. Ed. 738, 739)."

Since the local ordinance is designed to impede and stop the flow of human commerce from Mexico to other places in the United States through San Diego County, it is an unreasonable burden on interstate commerce and violates Article I, Section 8, Clause 3 of the Constitution. The ordinance interferes with and delays the movements of international commerce.

"Goods in transit from another country while in transit are immune from state taxation."

Article I, Section 10, Clause 2 of the Constitution;
Hooven & Allison Co. v. *Evatt*, 324 U. S. 654, 656, 89 L. Ed. 1258.

We think that the same principle should apply to taxicabs traveling in interstate commerce. The immunity from local taxation survives, "that immunity survives their arrival in this country and continues" until reaching their destination, and in the case of articles in transit until they are removed from the original package.

We think that Good Neighborly Policy under our treaties with Mexico and our Mutual Trade Pacts require such a determination.

The treaties of Amity, Commerce and Navigation have continuously been ratified between the two countries, and as construed and applied in this case was arbitrary, capricious and discriminately administered.

Prior to each arrest, the Office of the Sheriff received a telephone call from the defendants' taxi competitors stationed on the American side of the border, advising the sheriff's office that each defendant was leaving Mexico with passengers to the United States. Based on this information, the Sheriff's Office intercepted defendants in county territory and arrested them. At the place of arrest, taxi competitors of the defendants stationed on the American side of the border, who would follow the defendants to the place of arrest, would have the passenger loads of each defendant transferred to said competitor's taxicab and for hire would take them to the passenger's destination (R. 14).

In *Aero-Mayflower Transit Corp* vs. *RR Com.* 332 U.S. 495, 92 L. Ed 99, the court said:

> "That is true, although this Court has held invalid, as forbidden by the commerce clause, certain state taxes on interstate motor carriers because laid not as compensation for the use of the highways but for the privilege of doing the interstate bus business. *Interstate Transit* v. *Lindsey*, 283 U. S. 183, 186, 75 L. ed. 953, 969, 51 S. Ct. 380; cf. *McCarroll* v. *Dixie Greyhound Lines*, 309 U. S. 176, 179, 84 L. ed. 683, 686, 60 S. Ct. 504."

In *Toomer* v. *Witsell*, 334 U. S. 385, this Court held a South Carolina statute unconstitutional in violation of Article I, Section 8 of the Constitution where it required that owners of shrimp boats fishing in the maritime belt of South Carolina to dock at a South Carolina port, and unload, pack and stamp their catch (with a tax stamp) before shipping or transporting it to another state.

The Court pointed out in the opinion that the South Carolina Statute plainly and frankly discriminates against non-residents, and is so great that its practical effect is virtually exclusionary.

The Court, speaking through Chief Justice Vinson, said:

> "But the importance of having commerce between the forty-eight States flow unimpeded by local barriers persuades us that State restrictions inimical to the commerce clause should not be approved simply because they facilitate in some measure enforcement of a valid tax."

In 15 Corpus Juris Secundum § 102 it is stated:

> "A State may not discriminate in its taxation against products of other states or foreign countries.
>
> "A state may not in any way discriminate in its taxation against interstate commerce or the products and manufacturers of other state or foreign countries. . . ."

The California Court held that

> "The principal requirement of the ordinance is that the carrier's operator be of good moral character. This is a reasonable requirement of police regulations. (*in re* Porterfield 63 Cal. App. (2) 518, 536). There is no such specific requirement in the federal regulations, Parts 190-197. Having in mind the purpose of the Act of 1940, *supra*, to cooperate with the State and its duly authorized officials, we can see no conflict here."

The purpose of the California local ordinance finds a striking parallel in the case of *Di Santo* v. *Pennsylvania*, 273 U. S. pg. 34, 71 L. ed. p. 525, at 526 wherein this Court struck down a Pennsylvania law which required a license and the payment of a fee of $50.00 annually to sell steamship tickets or orders to or from foreign countries. This Court struck down the law saying:

> "The soliciting of passengers and the sale of steamship tickets and orders for passage between the United States and Europe constitute a well-recognized part of foreign commerce. See *Davis* v. *Farmers Co-op.*

Equity Co. 262 U. S. 312, 315, 67 L. ed. 996, 998, 43 Sup. Ct. Rep. 556. A state statute which by its necessary operation directly interferes with or burdens foreign commerce is a prohibited regulation and invalid, regardless of the purpose with which it was passed. *Shafer* v. *Farmers Grain Co.* 268 U. S. 189, 199, 69 L. ed. 909, 914, 45 Sup. Ct. Rep. 481, and cases cited. Such legislation cannot be sustained as an exertion of the police power of the State to prevent possible fraud. *Real Silk Hosiery Mills* v. *Portland*; 268 U. S. 325, 336, 69 L. ed. 982, 45 Sup. Ct. Rep. 525. The Congress has complete and paramount authority to regulate foreign commerce and, by appropriate measures, to protect the public against the frauds of those who sell these tickets and orders. The sales here in question are related to foreign commerce as directly as are sales made in ticket offices maintained by the carriers and operated by their servants and employees. The license fee and other things imposed by the Act on plaintiff in error, who initiates for his principals a transaction in foreign commerce, constitute a direct burden on that commerce. This case is controlled by *Texas Transport & Terminal Co.* v. *New Orleans*, 264 U. S. 150, 68 L. ed. 611, 34 A. L. R. 907, 44 Sup. Ct. Rep. 242, and *McCall* v. *California*, 136 U. S. 104, 34 L. ed. 391, 3 Inters. Com. Rep. 181, 10 Sup. Ct. Rep. 881.

"Judgment reversed."

In California there is a presumption fixed by State law that one is innocent of crime or wrong,

California Code of Civil Procedure, Section 1963 Sub. 1.

There is also a presumption under California law that a person's character is presumed to be of ordinary fairness (*People* vs. *Johnson* 61 Cal. 142).

In *Regl Silk Hosiery Mills* vs. *Portland* 268 U. S. 325, 69 L. ed. 982, this Court held an ordinance requiring persons

going from place to place soliciting orders for goods for future delivery to secure a license and give a bond as unconstitutional in materially burdening interstate commerce.

In *McCall* vs. *People of the State of California*, 136 U. S. 104, 34 L. ed. 391, this Court struck down an ordinance of the City of San Francisco which required a railway agent to secure a license before he could sell tickets for trips East. The Court held that the San Francisco ordinance unconstitutionally burdened interstate commerce.

The power to regulate foreign and interstate commerce having been given to Congress, that power is necessarily exclusive whenever the subjects of it are national in their character, or are such as to admit of one uniform plan or system of regulation.

Cooley v. *Port Wardens*, 12 How. 299, 319, 13 L. ed. 996, 1004; *Gibbons* v. *Ogden*, 9 Wheat. 16 L. ed. 23; *Brown* v. *Maryland*, 12 Wheat. 419, 6 L. ed. 678; Passenger Cases, 7 How. 283, 12 L. ed. 702; *Crandall* v. *Nevada*, 6 Wall. 35, 42, 18 L. ed. 745, 746; *Ward* v. *Maryland*, 12 Wall. 418, 430, 20 L. ed. 449, 452; State Freight Tax Case, 15 Wall. 232, 279, 21 L. ed. 146, 162; *Henderson* v. *New York* (*Henderson* v. *Wickham*) 92 U. S. 259, 272, 23 L. ed. 543, 549; *Hannibal & St. J. R. Co.* v. *Husen*, 95 U. S. 465, 469, 24 L. ed. 527, 529; *Mobile County* v. *Kimball*, 102 U. S. 691, 697, 26 L. ed. 238, 239; *Gloucester Ferry Co.* v. *Pennsylvania*, 114, U. S. 196, 203, 29 L. ed. 158, 161, 1 Inters. Com. Rep. 382, 5 Sup. Ct. Rep. 826; *Wabash, St. L. & P. R. Co.* v. *Illinois*, 118 U. S. 557, 30 L. ed. 244, 1 Inters. Com. Rep. 31, 7 Sup. Ct. Rep. 4.

When the power of Congress to regulate is exclusive, the failure of Congress to make express regulations indicates its will that the subject shall be free from regulation.

Bowman v. *Chicago & N. W. R. Co.* 125 U. S. 465 31 L. ed. 700, 1 Inters. Com. Rep. 823, 8 Sup. Ct. Rep. 689, 1062; *Gibbons* v. *Ogden*, 9 Wheat. 16 L. ed. 23; Passenger Cases, 7 How. 283, 462, 12 L. ed. 702, 777;

State Freight Tax Case, 15 Wall. 232, 279, 21 L. ed. 146, 162; *Hannibal & St. J. R. Co.* v. *Husen*, 95 U. S. 465, 24 L. ed. 527; *Welton* v. *Missouri*, 91 U. S. 275, 282, 23 L. ed. 347, 350; *Covington & C. Bridge Co.* v. *Kentucky*, 154 U. S. 204, 38 L. ed. 962, 4 Inter. Com. Rep. 649, 14 Sup. Ct. Rep. 635; *Brown* v. *Houston*, 114 U. S. 622, 631, 29 L. ed. 257, 260, 5 Sup. Ct. Rep. 1091.

The states under the guise of the police power cannot pass legislation placing a direct and primary burden on interstate or foreign commerce, where that commerce is essentially national in character.

Hall v. *De Cuir*, 95 U. S. 485, 24 L. ed. 547; *Louisville & N. R. Co.* v. *Central Stock Yards Co.* 212 U. S. 132, 53 L. ed. 441, 29 Sup. Ct. Rep. 246; *McNeill* v. *Southern R. Co.* 202 U. S. 543, 50 L. ed. 1142, 26 Sup. Ct. Rep. 722.

Defendant was engaged in foreign commerce essentially national in character; the Pennsylvania statute places a direct and primary burden on that commerce, and is, therefore, unconstitutional and void.

Davis v. *Farmers' Co-op. Equity Co.* 262 U. S. 312, 315, 67 L. ed. 996, 998, 43 Sup. Ct. Rep. 556; *Crutcher* v. *Kentucky*, 141 U. S. 47, 58, 35 L. ed. 649, 652, 11 Sup. Ct. Rep. 851; *Texas Transport & Terminal Co.* v. *New Orleans*, 264 U. S. 150, 68 L. ed. 611, 34 A. L. R. 907, 44 Sup. Ct. Rep. 242; *McCall* v. *California*, 136 U. S. 104, 34 L. ed. 391, 3 Inters. Com. Rep. 191, 10 Sup. Ct. Rep. 881; *Real Silk Hosiery Mills* v. *Portland*, 268 U. S. 325, *Stockard* v. *Morgan*, 185 U. S. 27, 46 L. ed. 785, 22 Sup. Ct. Rep. 576; *Rearick* v. *Pennsylvania*, 203, U. S. 507, 51 L. ed. 295, 27 Sup. Ct. Rep. 159; *Brennan* v. *Titusville*, 153 U. S. 289, 38 L. ed. 719, 4 Inters. Com. Rep. 658, 14 Sup. Ct. Rep. 829; *Robbins* v. *Taxing Dist.* 120 U. S. 489, 30 L. ed. 694, 1 Inters. Com. Rep. 45, 7 Sup. Ct. Rep. 592; *Singer Sewing Mach. Co.* v. *Brickell*, 233 U. S. 304, 58 L. ed. 974, 34 Sup. Ct. Rep. 493; *Stewart* v. *Michigan*, 232 U. S. 665, 58 L. ed. 786, 34 Sup. Ct. Rep. 476; *Crenshaw* v. *Arkansas*, 227 U. S. 389, 57 L. ed. 565, 33 Sup. Ct. Rep. 294; *Rogers* v. *Arkansas*, 227 U. S. 401, 57, L. ed. 569, 33 Sup. Ct.

Rep. 298; *Asher* v. *Texas*, 128 U. S. 129, 32 L. ed. 368, 2 Inters. Com. Rep. 241, 9 Sup. Ct. Rep. 1; *Stoutenburgh* v. *Hennick*, 129 U. S. 141, 32 L. ed. 637, 9 Sup. Ct. Rep. 256; *Barrett* v. *New York*, 232 U. S. 14, 31, 58 L. ed. 483, 490, 34 Sup. Ct. Rep. 203.

In the case of Hood & Sons, 336 U. S. 525, the State denied a license to a milk dealer doing business in an adjacent state, as in our case the County of San Diego has refused to issue licenses to the defendants. The license was denied on the grounds that if given it "would tend to a destructive competition in a market already adequately served, and would not be in the public interest."

Needless to say, the article of "milk" is certainly one which comes within the protective provisions of the police powers of the State, and that pursuant thereto within the regulative powers of the State.

Simply because the article of milk is one which may be treated by health and safety considerations is not in itself sufficient to permit a state to assert itself. Thus on page 531 of the opinion, the Court said:

> "In neither case is the measure supported by health or safety considerations but solely by protection of local consumption and limitation of competition. This Court unanimously rejected the State's contention in the *Seelig case* and held that the Commerce Clause, even in the absence of congressional action, prohibits such regulations for such ends."

Again in said case (*supra*) making reference to other concurring authorities, it is stated at page 538:

> "In so speaking it but followed the principle that the state may not use its admitted powers to protect the health and safety of its people as a basis for suppressing competition. In *Buck* v. *Kaykendall*, 267 U. S. 307, the Court struck down a state act because, in the language of Mr. Justice Brandeis: 'Its primary pur-

pose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition.' "

Apparently all that the majority of the Court needed was a showing that just *one* of the reasons which prompted the State's action was unconstitutional, even though there might have been other reasons within the admitted powers of the state to exact. In the case at bar, appellants competitors are not engaged in foreign commerce and the County of San Diego in order to favor local competitors, cannot deny appellants access to areas in the United States without the unincorporated area of the County of San Diego by putting said appellants in jail because they pass through the said County of San Diego, to unload passengers without the confines of that political entity, and despite that fact that said international commerce may interfere with said competitors who restrict their activities to within said County of San Diego.

The case of *Nippert* v. *Richmond*, 327 U. S. 417, involved the question of an Ordinance which was discriminatory in favor of local merchants as against out-of-state merchants. It involved an appeal from a judgment which affirmed a conviction for the violation of a municipal ordinance imposing a license tax.

This Court said at page 427:

> "And, regardless of the discretionary element in the issuing function of the Director of Public Safety, his permit was required with payment of the tax before the license could issue or the act of solicitation could lawfully take place, criminal sanction being prescribed for violation. So far as appears a single act of unlicensed solicitation would bring the sanction into play."

In the case at bar, before a taxicab may pass through San Diego County territory, a permit is required with the neces-

sity of prepaying $50.00. Such payment is a prerequisite for the issuance of a permit, and a criminal sanction is prescribed for the violation. Let us not forget that defendants are denied licenses, thereby compelling them against their will to violate the County Ordinance. Assuming, however, that the defendants did pay the flat fee charged by the County, and only did a foreign or interstate business, the ordinance would still be unconstitutional, as specifically applied to the defendants in the case at bar.

At page 430 (*infra*) of the opinion in the above case, reference is made to the following:

> ". . . at one time an itinerant trucker, who went through all the counties of the State, would have been obliged to pay $4,400.00 in fees in addition to posting a bond for $5,000.00. In addition, licensing statutes, otherwise fair on their face, are said to have been discriminatorily enforced against itinerant merchants."

There are, by the same token, fifty-eight counties in the State of California. If each county passed a law similar to the one passed by the County of San Diego, a taxicab operator would be obliged to pay $2,900.00 to avoid criminal sanctions should a customer desire to be taken from Mexico to Oregon, or to a sister state, which is not too rare an occasion.

It is not incumbent upon the appellants to concretely prove to this Court that they are prevented from taking customers from Mexico to the State of Oregon, or to a sister state. They merely need show that in effect the law as passed by the County of San Diego could prevent such commerce. In other words, the Supreme Court of the United States feels that it would be unwise to wait until each and every County of the State of California would pass a $50.00 fee as a condition to holding the same unconstitutional. The time to control the evil is at its inception.

The prior case of *Nippert* v. *Richmond* (327 U. S. 417) is not the only case where an apparently fair ordinance was held unconstitutional, by reason of the manner in which it was enforced. There are many others.

The Sheriff of the County of San Diego cannot, under color or pretense of a valid law, deprive the defendants, or any of them, of any constitutional right. Under color of law means under pretense of law. *Nippert v. Richmond*, 327 U. S. 417.

There is no evidence in the stipulated facts that there is an increased cost of maintenance and policing due to such traffic. There was no evidence to support the arbitrary and unsupported conclusion of said Court that the enforcement and supervision of taxicabs which pass through the County requires as much supervision and enforcement as those who spend all of their time within the limits of the unincorporated area, with its countless hotels, bars, and places of amusement.

The only facts before the court are those that were stipulated to, which facts indicate that the appellants do not stop within the unincorporated limits of the county. The stipulation further said,

> "were carrying passengers at the time of their arrests within the unincorporated area of the county of San Diego, through which county they were passing for the sole purpose of discharging said passengers on a continuous passage from the Republic of Mexico to places other than the unincorporated area of the county."

II

The ordinance inherently places in the hands of a single executive and administrative officer, the sheriff, the power to grant or revoke a license upon his whim, will and discretion.

Such a power is that exercised in totalitarian countries. (See *Phyle* v. *Duffy*, 334 U. S. 431.)

Such action imposes an unnecessary restriction and undue burden on interstate commerce.

More than that, however, the exercise of the power in this case was arbitrary and capricious as aroused by competitors of the appellants, and placed an undue and unnecessary burden upon them in transporting passengers from the Republic of Mexico into the United States.

Unlike *California* v. *Zook*, 336 U. S. 725, the ordinance was not designed to combat an evil as shown by that case to exist in respect to wildcat jitney buses; nor was the San Diego County Ordinance designed to meet such an evil.

The California Courts' construction of the Ordinance is that its principal requirement was that the carrier's operator be of good moral character (R. 35).

The stipulated facts, paragraph III thereof indicate that the portion of the Ordinance, Section 9 thereof, and which was declared unconstitutional by the United States District Court, in the injunction suit brought by appellants reads as follows:

> "The Sheriff may deny the application, or, having issued a permit, may revoke the same if the applicant or taxicab driver, is in the Opinion of the Sheriff, Unfit to Drive a Taxicab."

Because of said unconstitutionality, the appellees, amended the Ordinance under which appellants were again arrested to read as follows:

"The Sheriff may deny the application, or having issued the license may revoke the same if The Sheriff Shall Determine That the Applicant or Taxicab Operator Is of Bad Moral Character."

It is submitted that the State Motor Vehicle Code, paragraph 269, sets forth state-wide qualifications, and if the applicant is not possessed of the same, a license to drive will not be issued. In Section 271 thereof, are set forth grounds for permitting refusal of licenses, and Section 291 thereof, reasons for suspending or revoking licenses by a Court.

The United States District Court declared the San Diego County Ordinance unconstitutional as to the portion herein being treated in the following language:

"That Section 9 of said Ordinance as amended, and as quoted in . . . the findings herein, is void and unconstitutional in that no standard for the exercise of the Sheriff's discretion is set forth and as constituting an unlimited delegation to the Sheriff of the legislative powers of the Board of Supervisors" (Tr. pg. 22).

If the Sheriff cannot determine who is Unfit to drive a taxicab, the Sheriff cannot likewise determine whether a taxicab operator is of Bad Moral Character." In the event the Sheriff believes in a certain cult which in turn teaches that Catholics are of bad moral character, then an applicant for a taxi license who might be a Catholic could be denied a license, since the Ordinance does not set forth a standard for the exercise of the Sheriff's discretion.

Section 589.6 of the same California Motor Vehicle Code, does delegate statewide authority to locale municipalities to license and regulate the location of stands on streets and highways for use by taxicabs, in their respective jurisdiction. This limited delegation of authority however would be inapplicable to appellants, who have no reason to . . .

maintain stands on streets and highways within the jurisdiction of San Diego County.

The delegation phraseology reads as follows:

> "Local authorities may by ordinance license or regulate the location of stands on streets and highways for use by taxicabs and other public carriers for hire in their respective jurisdictions."

The avariciousness of the County of San Diego in the interpretation of this delegation of authority in creating a trade barrier is exemplified by the fact that in the former ordinance involving the first arrests of appellants to-wit: Regulation thereof, No. 6, provides in part:

> "Taxicabs licensed in counties other than San Diego County will not be permitted to pick up passengers in San Diego County; no taxicab or car for hire licensed by this office will be permitted to pick up passengers outside the limits of San Diego County."

The United States District Court found this section to be patently unconstitutional as an attempted interference with and prohibition of interstate and foreign commerce (Tr. page 22).

When constitutional rights are involved, this Court in cases coming to it from State Court will determine for itself from the record the existence of the controlling facts upon which such constitutional questions are based.

Railroad Comm. v. *Texas & P. R. Co.*, 229 U. S. 336, 57 L. Ed. 1215;

Coombes v. *Gibbs*, 285 U. S. 434, 76 L. Ed. 866;

Detroit United R. Co. v. *Detroit*, 242 U. S. 238, 61 L. Ed. 268.

It seems to us that the same inhibitions which prevent interference to goods that are brought into this country from a foreign country (*Howe Machine Co.* v. *Gage*, 100

U. S. 676, 25 L. Ed. 754; *Pittsburgh & S. Coal Co.* v. *La.*, 156 U. S. 590, 39 L. Ed. 544; *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100, 67 L. Ed. 894) should apply to human passengers who should not be interfered with when brought in from foreign countries, and, that like package goods, human cargo is entitled to be brought through a county without interference by that county.

The California Courts did not deem to answer the argument that *the local taxi ordinance imposed an undue burden on interstate commerce*, and we deem it that they have no answer to this position to our argument thereon.

III

The ordinance is in conflict with the National Transportation Policy Act, (49 U.S.C.A. 301-327) which, by regulations, covers taxicabs in respect to general definitions, hours of service, qualifications of drivers, driving of motor vehicles, accident reports, inspection and maintenance and carrying of explosives and other dangerous articles by motor vehicles, code of federal regulations, Part 90-197.

While cooperation with the State and its duly authorized officials is permitted, this does not permit a county to adopt a taxing ordinance, giving one officer the power to deprive taxicabs engaged in commerce in international transportation of their right and thus impose upon it an unnecessary burden in interstate commerce.

H. P. Hood & Sons v. *Dumond*, 336 U. S. 525, we think, is squarely in point. That case forbad additional restrictions imposed for the avowed purpose and with the practical effect of curtailing the volume of Interstate Commerce to aid local economic interests.

Here, too, while the avowed purpose was concealed in the ordinance, in practical effect that was what happened. The competitors on the American side of the line notified the

Sheriff to stop the cabs coming from Mexico so that they, the local cab competitors, could benefit economically by having the passengers removed to their own taxicabs.

IV

The Commerce Clause of the Constitution, Article I, Section 8, Section 3 was designed to reach state legislation which practically obstructs commerce, as well as that which expresses hostility toward it.

Union Brokerage Co. v. *Jensen,* 322 U. S. 202, 88 L. Ed. 1227, 152 A. L. R. 1072;
Milk Control Board v. *Eisenberg Products,* 306 U. S. 346, 83 L. Ed. 752;
Edwards v. *California,* 314 U. S. 160, 86 L. Ed. 119;
Kelly v. *Washington,* 302 U. S. 1, 82 L. Ed. 3.

The rule generally observed is that the free flow of interstate and international commerce must have its freedom from local restraint in matters requiring uniformity of regulation and are intersafeguarded by the Commerce Clause, Article I, Section 8, from State and hence from County interference:

> "The Constitution confers upon Congress the power to regulate commerce among foreign countries and the several States."
>
> *U. S. Constitution,* Article I, Section 8, Clause 3.

As said in *Bell* v. *Porter,* 159 Fed. (2d) 117:

> "This power to regulate commerce is not confined to commercial or business transactions. From an early date such commerce has been held to include the transportation of persons and property no less than the purchase, sale, and exchange of commodities, United States v. Hill, 248 U. S. 420, 423, 39 S. Ct. 143, 63 L. Ed. 337, and goods may move in commerce though

they never enter the field of commercial competition. For example, the movement of people across State lines and the unrestricted ranging of cattle across the boundary between two States in commerce."

V

The ordinance contains no special prohibitions relating to police powers and reasonably related to its purpose.

No standards are set up in the ordinance. The Sheriff is given arbitrary and capricious powers to administer the same; in this case they were exercised for the benefit of local competitors.

The State Court in its opinion stated:

> "The State's interest in its own highways has been recognized superior to the federal interest against 'burdening' commerce. . . . (citing cases)"

An examination of the San Diego County Ordinance indicates that it is bare of anything pertaining to police powers. One cannot ascertain from a reading of the ordinance what end is sought by the same. It adds nothing not already contained in the State Motor Vehicle Code, and admittedly Appellants are possessed of State Licenses and amenable to State Law concerning State issued licenses, and requirements, speed limits, insurance, etc.

In the case of *Southern Pacific Co.* v. *Arizona*, reported in 325 U. S. 761, the State of Arizona made it unlawful to operate within the State passenger trains of more than fourteen cars or a freight train of more than seventy cars. The Supreme Court examined the law carefully and determined that the law was unconstitutional because it passed beyond what was plainly essential for safety, and it did not appear that it would lessen the danger of accident.

Under the authority of said case the California Court ought to have examined the County Ordinance to see what, if anything, it contained, and in the absence of necessary provisions should have nullified the ordinance. If it contained material relating to police powers, even that in itself would not have been sufficient. A local law cannot circumvent the Federal Law by the insertion of matters supposedly under pretense of police powers, which are untrue or simply give lip service by way of form to police powers. The County of San Diego in the case at bar does not even go through the pretense of containing matters related to police powers. The law seeks neither to justify or excuse its own existence, but merely to place arbitrary powers in the hands of the Sheriff and enable him to exclude foreign commerce and discriminate in favor of local competitors.

When the defendants load passengers on the Mexican side of the border in what is known as the Federal zone it is a well-known judicial fact that they do so within the direct observation of United States Customs and Immigration Officials provided by the Government of the United States, pursuant to Congressional Acts wherein it regulates foreign commerce.

Prior to entry into the County of San Diego, the automobiles of defendants are inspected for contraband, narcotics, liquor, or any prohibited articles, matters which the so-called police regulations of the County of San Diego do not touch. As a right to use the highways of the United States, and prior to the entry into the United States by defendants in their foreign commerce activities, United States officials inspect automobiles to see if known criminals are passengers, or whether the cabs contain prostitutes, etc. The very fact that defendants are engaged in foreign commerce, gives to each citizen of the United States greater protection than San Diego County taxicabs who limit their activities to the unincorporated area of the County.

In *Hood and Sons* v. *Dumond*, 336 U. S. 525, 538, 539, this Court said:

"As the Court said in *Baldwin* v. *G. A. F. Seelig, Inc.*, 294 U. S. 511, 527, 79 L. Ed. 1032, 1040, 55 S. Ct. 497, 101 ALR 55, 'What is ultimate is the principle that one state in its dealing with another may not place itself in a position of economic isolation.' In so speaking it but followed the principle that the state may not use its admitted powers to protect the health and safety of its people as a basis for suppressing competition. In *Buck* v. *Kuykendall*, 267 U. S. 307, 69 L. Ed. 623, 45 S. Ct. 324, 38 ALR 286, the Court struck down a state act because, in the language of Mr. Justice Brandeis, 'Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. . . .

"Or suppose that the field of discrimination and retaliation be industry. May Michigan provide that automobiles cannot be taken out of that State until local dealers' demands are fully met? Would she not have every argument in favor of such a statute that can be offered in support of New York's limiting sales of milk for out of state shipment to protect the economic interests of her competing dealers and local consumers? Could Ohio then pounce upon the rubber-tire industry, on which she has a substantial grip, to retaliate for Michigan's auto monopoly?

"Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, that no home embargoes will withhold his export, and no foreign state will by customs duties or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation by any. Such was the vision of the Founders; such has been the doctrine of this Court which has given it reality.

"The State, however, insists that denial of the license for a new plant does not restrict or obstruct

interstate commerce, because petitioner has been licensed at its other plants without condition or limitation as to the quantities it may purchase. Hence, it is said, all that has been denied petitioner is a local convenience—that of being able to buy and receive at Greenwich quantities of milk it is free to buy at Eagle Bridge and Salem. It suggests that, by increased efficiency or enlarged capacity at its other plants, petitioner might sufficiently increase its supply through those facilities.

"The weakness of this contention is that a buyer has to buy where there is a willing seller; and the peculiarities of the milk business necessitate location of a receiving and cooling station for nearby producers. The Commissioner has not made and there is nothing to persuade us that he could have made findings that petitioner can obtain such additional supplies through its existing facilities; indeed he found that "applicant has experienced some difficulty during the flush season because of the inability of the plant facilities to handle the milk by 9 a. m.", the time its receipt is required by Boston health authorities unless it is cooled by the farmer before delivery, and a substantial part of it is not."

For which reasons we pray that the judgments below be reversed and the cause ordered dismissed.

Respectfully submitted,

MORRIS LAVINE.

Of Counsel

MANUEL RUIZ, JR.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 165

NORMAN H. BUCK AND MIGUEL R. GUERRA,

Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPEAL FROM THE SUPERIOR COURT IN AND FOR THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

BRIEF FOR RESPONDENT.

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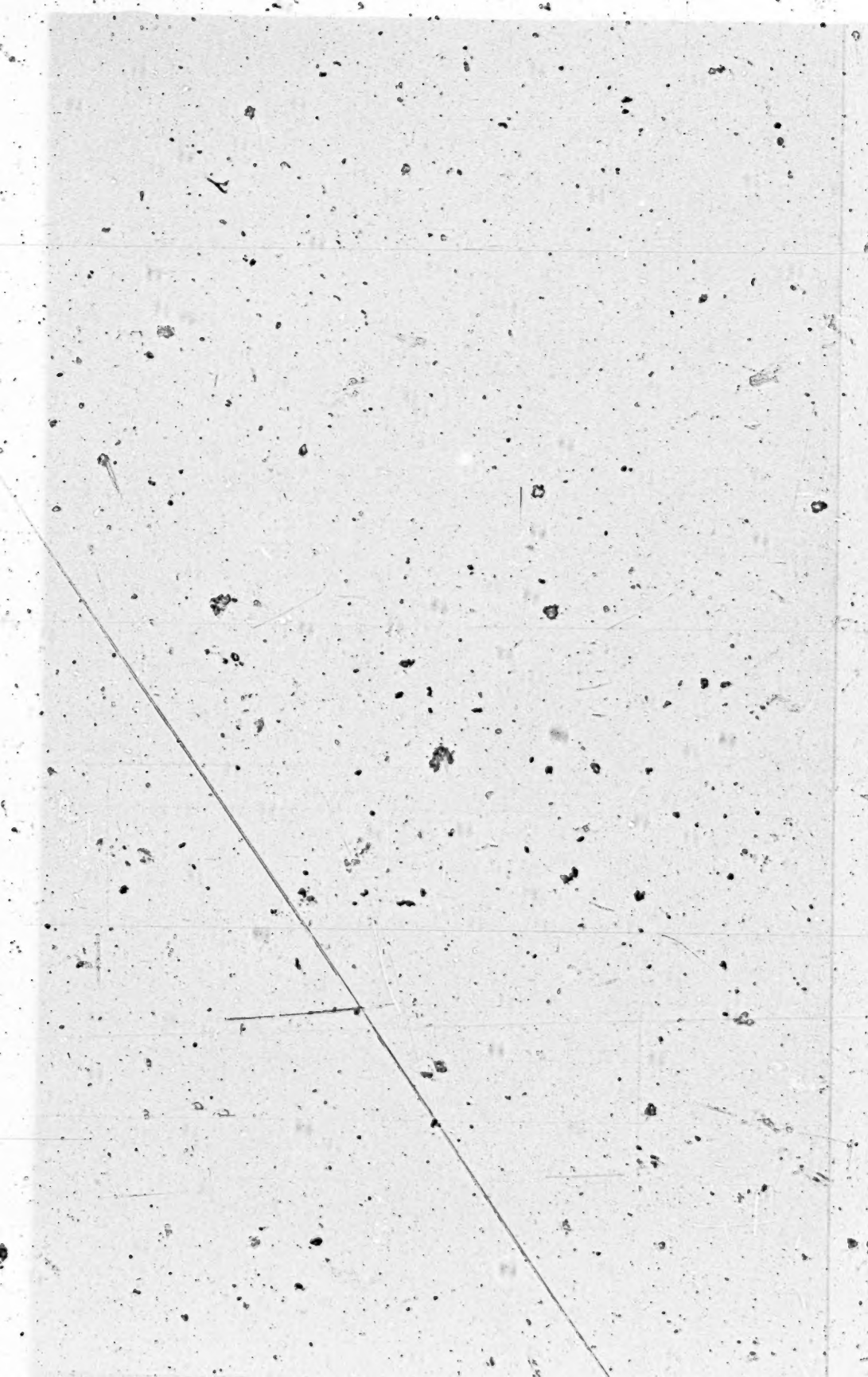

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 165

NORMAN H. BUCK AND MIGUEL R. GUERRA,

Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPEAL FROM THE SUPERIOR COURT IN AND FOR THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

BRIEF FOR RESPONDENT

Opinions Below.

The facts in the trial court were stipulated (R. 10-15, with attached exhibits R. 15-26). The opinion of the Superior Court (R. 31-36) is reported in 101 California Appellate Reports (2d) (Supp.) 907, 226 Pac. (2d) 87. The opinion of the Justice of the Peace who tried the case (R. 52-54) is not reported.

Jurisdiction.

The judgment of the Superior Court was filed December 14, 1950 (R. 31). An order denying a petition for rehearing was filed January 5, 1951 (R. 45). An order allowing appeal was made April 4, 1951 (R. 55) by the presiding judge of the appel-

late department of the Superior Court. An order noting probable jurisdiction (R. 59) was made October 8, 1951.

The jurisdiction of this court rests upon the provisions of C. 646, 62 Stats. 929, 28 U.S.C.A. sec. 1257 (2).

Questions Presented.

1. May a county require of the owner or driver of a taxicab licenses to engage in such occupations as applied to traffic originating in a foreign country?

2. May such a licensing ordinance be enforced as to traffic passing through unincorporated territory in cases where the destination of the passengers is an incorporated city?

3. Is it an unreasonable burden upon foreign commerce to require in a taxicab licensing ordinance:

(a) A fee of $50.00 per annum from persons engaging in the business plus an additional $1.00 for each vehicle and each driver so engaged.

(b) A qualifying license of each driver and each proprietor requiring, among other things, good moral character and a knowledge of the geography of the county.

(c) Where the ordinance provisions are severable, is the $1.00 licensing provision unreasonably burdensome as to the driver of the cab?

4. May one subject to a licensing ordinance complain of alleged unjust revocation or denial of a license as a defense to a prosecution for operating without a license where he does not invoke or exhaust administrative and judicial review available to him to review such revocation or denial?

5. In a criminal prosecution for operating without a license, if the licensing ordinance is fair and reasonable on its face, must not alleged discrimination in its enforcement be shown affirmatively in the trial court if it is to be considered as a defense to such prosecution?

Statutes Involved.

San Diego County Ordinance No. 464 (New Series) as amended by Ordinances Nos. 609 (New Series), 958 (New Series) and 964 (New Series) is set forth at R. 46-52.

United States Constitution Article I Section 8, Clause 3 (Commerce clause).

Motor Carrier Act 1935, Interstate Commerce Act part II, 49 U.S.C.A. secs. 301-327, especially sec. 303 (b).

California Public Utilities Act (Cal. Stats. 1915 p. 115 as amended, Deering's California General Laws, Act 6386).

California Constitution Art. III sec. 23.

Statement.

At the date this brief goes to the printers, November 15, 1951, respondents have not received appellant's brief, which was due November 8. Consequently this statement and the brief as a whole is not responsive to appellant's brief, and in writing this we can only assume that appellant's arguments are substantially the same as those they advanced in the lower courts.

The complaints in issue (R. 24-26) charge appellants with violation of section 9 of San Diego County Ordinance No. 464 (New Series) as amended. The complete ordinance is found at R. 46.

Section 9 reads as follows:

"It shall be unlawful for any person to drive or to be in actual physical control of any taxicab in the unincorporated area of the County of San Diego without first obtaining a permit in writing so to do from the sheriff of the County of San Diego.

"Applicants for such permits shall file applications therefor with the sheriff of the County of San Diego on a form furnished by the sheriff which, when completed, will contain full personal information concerning the applicant.

"Upon obtaining a permit as herein required the holder of such permit shall be entitled to an identification card of such design, and bearing such number as the sheriff may prescribe, upon payment of a fee of $1.00 annually, therefor, which shall be paid by the applicant to the tax collector and shall be due on the 1st day of June of each year. Such card shall be carried by the permittee during all business hours and shall not be transferable.

"Each applicant for a permit shall be examined by the sheriff as to his knowledge of the provisions of this ordinance, the Vehicle Code, traffic regulations and the geography of the county, and if the result of the examination is unsatisfactory he shall be refused a permit. The sheriff may deny the application or having issued the permit may revoke the same if the sheriff shall determine that the applicant or taxicab driver is of bad moral character or is guilty of violation of any of the provisions of this ordinance or of any lawful regulation promulgated pursuant thereto or has been convicted of any offense involving moral turpitude.

"The sheriff may in his discretion direct the tax collector to issue a temporary permit pending final action on such

application for permit. If a permit is denied or revoked, the permit shall be forthwith surrendered to the sheriff. No portion of the fee for a temporary or permanent taxicab driver's permit shall be returnable upon denial or revocation of such permit.

"Any person whose taxicab driver's permit shall have been revoked or renewal is refused by the sheriff, may within ten (10) days after receipt of notice thereof, appeal to the Board of Supervisors for a hearing thereon and the decision of the Board of Supervisors in this regard shall be final: If no appeal is taken within ten days, the action of the sheriff shall be final.

"To facilitate the hearing and disposition of such appeal, the Board of Supervisors may appoint a referee to take testimony and to report his findings and recommendations to the Board. If the Board appoints a county officer or county employee to act as referee, he shall serve as such referee without any additional compensation. All time spent as a referee shall be considered as time spent by such officer or employee in performing the duties of his position."

Section 13 (R. 51) permits any violation to be punished as a misdemeanor.

The case was submitted to the Justice's Court upon an agreed statement of facts (R. 10-15). It was stipulated (R. 13) that on the occasion of the arrest the appellants were carrying passengers from a point on the Mexican side of the international boundary to places "other than the unincorporated area of the County of San Diego within the State of California".

The trip was not an isolated one but represents an established and regular course of business (R. 10, 18).

The arrest was made within the unincorporated territory (R. 13).

The stipulated facts (R. 11-12) refer to an injunction action brought by present appellants against the Sheriff in the United States District Court. The findings and judgment of that court are attached as exhibits to the stipulation (R. 17-24) and it is further stipulated (R. 12) that the findings may be considered as accurate statements of fact.

The United States District Court by its judgment denied an injunction and dissolved the injunction pendente lite (R. 24). Two provisions of the ordinance as it then existed were declared or deemed void, but these provisions were deleted or amended by later amendment (R. 12). The District Judge found (R. 22, 24) that in all other respects the ordinance is valid. In the District Court findings (R. 20,21) are set forth the accusations under which the licenses of Buck and Guerra were revoked.

The Justice's Court found the ordinance valid and pronounced judgment accordingly (R. 2, 4, 6) that each defendant pay a fine of $250.00 of which $200.00 was suspended for two years on condition the ordinance be not further violated.

SUMMARY OF ARGUMENT

The People of the State of California urge in support of the validity of the ordinance as applied the following points:

1. Regulation of taxicabs is universally accepted as a reasonable and proper exercise of the police power.

2. Congress has specifically exempted taxicabs from regulation by the Interstate Commerce Commission and has thereby elected to permit state or local regulation of taxicabs engaged in interstate or foreign commerce.

3. The State of California has likewise delegated to local governmental agencies the regulation and control of taxicabs.

4. The appellants have not shown, nor do the record or other facts disclose, that the amount of the license charged is unreasonable or in excess of the sum required for administration of the ordinance.

5. The appellants have not shown that the ordinance is either in its wording or in its application or enforcement, unreasonable or discriminatory.

a. The ordinance does not discriminate against appellants or operate as an undue economic burden upon them. The record discloses no cumulative burden of taxation by numerous local agencies or municipalities.

b. The possession of other permits and licenses by appellants did not exempt them from the requirements of the ordinance in question.

6. The appellants have not invoked or exhausted the available administrative and judicial remedies relating to the revocation and denial of their licenses.

ARGUMENT

I.

THE POLICE POWER PERMITS TAXICAB REGULATION

In support of the proposition that the police power conferred upon local government permits the regulation, control and licensing of taxicabs, only a few of the numerous cases so holding need be cited.

In *re Martinez*, 22 Cal. 2d 259, 138 P. 2d 10;

Clem v. City of La Grange, 169 Ga. 51, 149 S.E. 638, 65 A.L.R. 1361;

State v. Gamelin, 111 Vt. 245, 13 A. 2d 204.

Packard v. Banton, 264 U. S. 140 at 144.

The reason for sustaining the police power as to taxicabs is readily apparent. Taxicab drivers have a unique opportunity to defraud customers. Cases of murder and rape committed by taxicab drivers upon passengers are unfortunately not unknown. In the instant case counsel will not dispute that many, if not most of the passengers picked up at the border seeking transportation to San Diego and other incorporated cities are members of the armed services of the United States, many of them young, inexperienced and ignorant. Some of them at the time of engaging a taxicab will have been drinking. It is of prime importance for the protection of these young men that the power of the Sheriff to revoke or deny licenses to persons of demonstrably bad moral character be recognized.

In *Frost v. Railroad Commission*, 271 U. S. 583, at 601, Mr. Justice Holmes, said, dissenting:

> "The point before us seems to me well within the legislative power. We all know what serious problems the automobile has introduced. The difficulties of keeping the streets reasonably clear for travel and for traffic are very great. If a state speaking through its legislature should think that, in order to make its highways most useful, the business traffic upon them must be controlled, I suppose that no one would doubt that it constitutionally could, as I presume, most states or cities do, exercise some such control. The only question is how far it can go. I see nothing to prevent its

going to the point of requiring a license and bringing the whole business under the control of a railroad commission so far as is to determine the number, character and conduct of transportation companies and so to prevent the streets from being made useless and dangerous by the number and lawlessness of those who seek to use them. I see nothing in this act that would (602) require private carriers to become common carriers, but if there were such a requirement, it, like the provisions concerning rates and accounts, would not be before us now, since, as I have said, the statute makes every section independent and declares that if valid it shall stand even if all the others fall. As to what is before us, I see no great difference between requiring a certificate and requiring a bond as in *Packard v. Banton*, 264 U. S. 140, 68 L. ed. 596, 44 Sup. Ct. Rep. 257, and although, as I have said, I do not get much help from general propositions in a case of this sort, I cannot forbear quoting what seems to me applicable here. Distinguishing between activities that may be engaged in as a matter of right and those like the use of the streets that are carried on by government permission, it is said: 'In the latter case the power to exclude altogether generally includes the lesser power to condition, and may justify a degree of regulation not admissable in the former.' 264 U. S. 145. I think that the judgment should be affirmed."

In *Yellow Taxicab Co., v. Gaynor*, 82 Misc. 94, 143 N.Y. Supp. 279 at 301 in sustaining licensing requirements involving among other things, evidence of good moral character, the court emphasized recorded evidence of robberies and assaults committed by hackmen, and supports the manifestly justifiable public policy of requiring that taxicab drivers be licensed.

II.

CONGRESS HAS SPECIFICALLY EXEMPTED TAXICABS FROM FEDERAL REGULATION.

U. S. Code Annotated, Title 49 section 303b reads in part:

"Nothing in this chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include:

> (2) Taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini."

It has not so far been contended by appellants that they possess or need to possess a certificate from the Interstate Commerce Commission.

In the absence of Federal legislation dealing with the same subject, the reserve power of the state to exercise its police power, even as applied to one engaged in interstate or foreign commerce, is upheld.

California v. Thompson, 313 U. S. 109
Di Santo v. Pennsylvania, 273 U. S. 34 (dissenting opinions)
Willson v. Black Bird Creek Marsh Co., 2 Pet. 245, 7 L.Ed. 412
Cooley v. Board of Port Wardens, 12 How. 299, 13 L. Ed. 996
Robertson v. California, 328 U. S. 440.

Although the Superior Court in its opinion (R. 35) discusses *California v. Zook*, 336 U. S. 725, the present case is stronger on the point since that case turned on the problem whether state legislation which duplicates an act of Congress is in conflict with it, while in the present case Congress has stated clearly that

Federal control of taxicab operations is not intended. If the State and its subdivisions are powerless to exercise control the business will go unregulated and uncontrolled.

Specific authority conferred by Congress upon the States to regulate a given activity in interstate or foreign commerce will be upheld. *Prudential Ins. Co. v. Benjamin*, 328 U. S. 408.

III.

THE STATE OF CALIFORNIA PERMITS LOCAL REGULATION.

Although the point is clear and may be of little interest to this court, the California Supreme Court, in *In re Martinez*, 22 Cal. 2d 259, 138 P. 2d 10 has held that the power to regulate and control taxicabs in California lies with local governmental agencies and not with the State Public Utilities Commission.

Such is the construction placed by the highest California court upon the provisions of Article III sec. 23 of the California Constitution and upon the Public Utilities Act (Cal. Stats. 1915 p. 115 as amended, Deering's California General Laws, Act 6386).

IV

THE LICENSE FEES ARE REASONABLE.

The ordinance imposes upon every person engaging in the taxicab business an annual fee of $50.00 plus an additional $1.00 for each cab and each driver. The $50.00 fee and the cab fee of $1.00 are imposed by Section 4 of the ordinance (R. 47), while the prosecution is under Section 9 (R. 49) which forbids driving of a taxicab without the $1.00 permit which Section 9 requires of the driver. Section 14 (R. 51) makes each provision severable. The opinion of the Superior Court limited its consideration to the provisions of Section 9 (R. 32).

Therefore, if the $50.00 fee provision in Section 4 should be considered burdensome, the present conviction can be sustained independently.

However, there was no evidence introduced in the Justice's court or elsewhere showing that the fee is excessive relative to the expense of administering the ordinance. In the absence of such evidence the reasonableness of the charge is presumed.

Clark v. Gray, 306 U. S. 583.

A flat fee, not unreasonable in amount has been sustained in *Morf v. Bingaman*, 298 U. S. 407.

Aero Mayflower Transit Co. v. Bd. of R.R. Commissioners, 332 U. S. 495.

Aero Mayflower Transit Co. v. Georgia Public Service Comm., 295 U. S. 285.

In *Am. Motor Coach System v. Philadelphia*, 28 F. 2d 736, an annual license fee of $50.00 per bus was held not an unreasonable burden on interstate commerce.

In *Aero Mayflower Transit Co. v. Georgia Public Service Comm.*, 295 U. S. 285, 79 L. Ed. 1439, the following language appears:

> "The fee is not for the mileage covered by a vehicle. There would be administrative difficulties in collecting on that basis. Our fee is for the privilege of a use as extensive as the carrier wills that it shall be. There is nothing unreasonable in a burden so imposed . . . One who receives a privilege without limit is not wronged by his own refusal to enjoy it as freely as he may."

In general it is submitted that appellants are precluded on the question of reasonableness of the $50.00 annual license fee by the federal court findings. Evidence was presented to the federal court

establishing that the expense of administering the ordinance was not met by the fees collected, which is accepted as a test of reasonableness in *Clark v. Gray*, 306 U. S. 583, 83 L. Ed. 1001. The same case holds that the burden of proving a license fee unreasonable so as to constitute a burden on interstate commerce is on the licensee and not on the state or municipality. In the absence of evidence by appellants establishing that the license fee is unreasonable, its reasonableness is presumed. On this point the Clark case cites at 306 U. S. 599:

Hendrick v. Maryland, 235 U. S. 610;
Interstate Busses Corp. v. Blodgett, 276 U. S. 245;
Morf v. Bingaman, 298 U. S. 410;
Ingels v. Morf, 300 U. S. 296;
Gr. Nor. R. Co. v. Washington, 300 U. S. 154.

As to the imagined case of a taxi driver who has to pay a large tax to drive through many localities, let us remember that the taxi business is essentially local; that bus transportation over fixed routes between fixed termini is governed by federal and state regulation and is beyond the jurisdiction of local regulatory bodies, and also the issue again is one that was passed upon and considered by the federal court. The quoted language from *Aero Mayflower Transit Co. v. Georgia Public Service Comm.* is the answer, that when the expense of regulation can only be met by a substantial fee, the fee is not made unreasonable by the fact that its broad privilege is little used.

The assumed facts also have no relationship to the case at bar. Here the activity of the appellants is substantial and involves regular and continued use of the county's highways and not occasional or sporadic use. The stipulated facts show that appellants are regularly engaged in the business of transporting passengers

for hire in and through the unincorporated area of San Diego County.

Justice Traynor of the California Supreme Court summarized the modern tendency at 28 Calif. Law Rev. 168:

> "Interstate commerce is no longer an indivisible whole, inviolate from taxation at any point, but an aggregate of component parts which may be separately taxable in various states. Henceforth states may fish in the stream of interstate commerce so long as they do not catch more than their legal limit."

V.

THE ORDINANCE HAS NOT BEEN ENFORCED IN AN UNREASONABLE OR DISCRIMINATORY FASHION.

a. The economic impact is not burdensome or unreasonable.

The argument of discriminatory application of an ordinance fair on its face finds no factual support in the record. The stipulated facts show only that the appellants were formerly licensed and that their licenses were revoked in compliance with the provisions of the ordinance (R. 20, 21). It also appears that, having revoked the licenses, the Sheriff continued to deny a renewal or re-issuance of licenses during the pendency of the criminal prosecution (R. 12, 13). It is generally accepted that one who complains of discriminatory enforcement of an ordinance fair on its face must establish by competent evidence that such discrimination exists (*Southern Railroad Company v. King*, 217 U. S. 524; *Terminal Railroad Association v. Brotherhood of Railroad Trainmen*, 318 U. S. 1).

In this connection appellants rely on *Nippert v. Richmond*, 327 U. S. 416, particularly on the footnote No. 21 at Page 430, referring to the case of an itinerant trucker who, going through

all the counties of Arizona, had to pay $4,400 in fees. The distinction is principally one of actual economic impact. Appellants here do not intend to drive through a series of counties. Instead, as shown by the stipulated facts and the finding of the U. S. District Court (R. 10, R. 18) their sole point of picking up passengers was directly adjacent to the International Border on the Mexican side of the line. The stipulation in Paragraph 2 at Page 10 of the record and the findings at Page 18 of the record indicate that the greater proportion of the passengers are taken to the City of San Diego. The U. S. District Court findings establish that at the time of that trial passengers were taken to unincorporated as well as to incorporated areas. The stipulation shows that counsel for appellants at least advised them thereafter not to accept passengers for the unincorporated area. In any event, there is nothing whatever to establish that the business was not confined to a relatively limited area extending some 18 miles between the International Border and the City of San Diego. The distance traveled on the Mexican side amounted to 75 feet or less. The distance traveled through the unincorporated area of San Diego County amounts to some 15 to 18 miles, depending on whether or not the route selected passes through the incorporated cities of National City and Chula Vista.

b. The possession of other licenses by appellants is immaterial.

An attempt is made to build up the claim of discrimination by reference to the other licenses and permits possessed by or required of the appellants. They have and are required to have the following: First, a Chauffeur's License issued by the Department of Motor Vehicles of the State of California as required by Vehicle Code Sections 250 (b), 272 and 274, which provisions are applicable to anyone operating a motor vehicle in the employ of another. Second, a Motor Vehicle Transportation License re-

quired by Sections 9601, 9651, 9701 of the Revenue and Taxation Code. The Motor Vehicle Transportation License Tax Law, Sections 9601 through 10501 of the Revenue and Taxation Code, is clearly a revenue measure, does not involve police regulation or control, and is in addition to all other forms of regulation and control. Section 9704 expressly provides: "No license issued authorizes the operation of any motor vehicle upon the public highways of this State contrary to the laws in effect regulating the operation of motor vehicles."

It is well settled that in California a valid county or municipal ordinance is a law or a statute. *Stanislaus County Dairymen's Protective Assn. v. Stanislaus County* 8 C. 2d 378, 65 P. 2d 1305, *Ex parte Isch,* 174 Cal. 180, 162 P. 1026, and see *John P. King Co. v. City of Augusta* 277 U. S. 100.

As to the possession by the appellants of licenses to operate in the City of San Diego, the City ordinance is not in the record. After conference with the City Attorney we are prepared to state that the possession of a City License is not required by the existing City ordinance of taxicabs that come into the City and discharge their passengers. The City, on the other hand, licenses two types of vehicles, neither of which has so far been operated by the appellants. It licenses as taxicabs only cabs equipped with a taxi meter. The City also limits the number of taxicabs. It licenses as cars for hire only seven-passenger limousines, which vehicles, if they operated in foreign commerce, would have to secure a certificate from the Interstate Commerce Commission inasmuch as a seven-passenger vehicle is not within the exemption set forth at Title 49, U.S.C.A. Section 303 (b) (2).

From the Federal court finding (R. 18, 19) it appears that both Buck and Guerra had San Diego City taxicab driver's licenses entitling them to work for a licensed proprietor. Buck

has a car-for-hire license allowing him to own and operate a seven-passenger limousine. Neither is entitled to own or operate a taxi business in the City.

There is a highly significant omission among the various licenses and permits which appellants might be supposed to possess. They allege a lawful and respectable business originating in Mexico. It does not appear that they possess any license, permit, certificate or authority from the Mexican Government or any agency thereof. This is a factor going to moral character and fitness to operate. If it be true, as contended by the Sheriff of San Diego County throughout these proceedings, that these operations on the Mexican side are illegal and are permitted only by bribery of Mexican officials, we have a factor bearing directly upon the moral character of appellants and one which can best be determined in a proceeding in which the moral character of appellants is in issue. A proceeding in mandamus or certiorari to compel issuance of a license would raise such an issue.

On the point of discriminatory enforcement in general it may be noted that the appellants have not invoked either the equal protection or the due process clauses of the 14th Amendment. Cases arising under those clauses wherein it is argued that a state law or local ordinance has been administered "with an evil eye and unequal hand" involve in each case a factual showing of such maladministration and not mere surmise; for example, *Norris v. Alabama*, 294 U. S. 587; *Yick Wo v. Hopkins*, 118 U. S. 356.

An examination of authorities dealing with taxicab licensing discloses that the ordinance here involved appears to be a normal and conventional type of ordinance.

With specific application to taxicab operations, it has been held that moral character is a reasonable requirement of a licensing ordinance.

Scott v. Hart, 128 Miss. 353, 91 So. 17;

Beene v. Bryant (Tex. Civ. App.) 201 S. W. 2d 268;

Ostroff v. Valentine, 257 App. Div. 314, 12 N. Y. Supp. 2d 968;

Yellow Taxicab Co. v. Gaynor, 82 Misc. 94, 143 N. Y. Supp. 279.

In proceedings to prosecute criminally the offense of violation of a licensing ordinance, it is held to be no defense that a license was applied for and refused.

Commonwealth v. McCarthy, 225 Mass. 192, 114 N.E. 287;

U. S. v. Slobodkin, 48 F. Supp. 913;

Village of E. Alton v. Arst, 386 Ill. 224, 53 N.E. 2d 929;

Lehon v. Atlanta, 242 U. S. 53;

Bradley v. Richmond, 227 U. S. 477;

Gundling v. Chicago, 177 U. S. 183.

On the general topic of discrimination it is urged that there are certain things the ordinance does not do or require which may be considered in evaluating its entire impact:

1. There is no limitation on the number of licenses.

2. There is no regulation of rates.

3. There is no requirement of fixed stands or regular places of business.

4. There is no limitation as to route or area served by each or any license.

Buck v. Kuykendall, 267 U. S. 307, may be distinguished in that in the present ordinance there is no limitation on the number of licenses and, consequently, the only effect relating to competition is the narrow one of refusing licenses on the basis of bad moral character or criminal conviction.

In relation to the question whether the ordinance is invalid where applied to vehicles which only pass through incorporated territory without stopping, the authorities in point are apparently not numerous or particularly convincing. In the present case it is submitted that as a Federal question it is immaterial except as it relates to the question of an unreasonable burden. As stated in the Superior Court opinion by Judge Burch (R. 36):

> "The record does not disclose that defendants are required by any other political division than San Diego County to evidence their fitness to operate taxicabs on the State's highways.
>
> "A peculiar situation of San Diego County in relation to taxicab passenger traffic across the border from Mexico would seem to put the County in a position to exercise such control over this traffic as might ordinarily be exercised by the State Legislature since taxicab control is delegated by the State to the County. (See *Bob-Lo Excursion Co. v. Michigan* [333 U. S. 28])".

It is accordingly urged that if it be conceded to the State of California that State control of the taxicab business is necessary and desirable and so recognized by Congress, the manner in which the State exercises that control directly or delegates it to local government or distributes it between local agencies is not a Federal question so long as its effect upon interstate or foreign commerce is not that of an unreasonable burden.

A contrary holding by this court would, it is submitted, mark a retrogression from the holding of *Erie R. Co. v. Tompkins*, 304 U. S. 64, to that of *Swift v. Tyson*, 16 Pet. 1, 10 L. Ed. 865.

The cases also apparently sustain the right of several municipalities or governmental agencies to license taxicabs entering or using their streets.

Star Transp. Co. v. Mason City, 195 Iowa 930, 192 N. W. 873 at 881;

State v. Gamelin, 111 Vt. 245, 13 A. 2d 204;

Opdyke v. Anniston, 16 Ala. App. 436, 78 So. 634;

City of Bridgeton v. Zeller, 100 N.J.L. 33, 124 A. 520, 101 N.J.L. 206, 127 A. 924;

Cooper v. Greenwood, 195 Ark. 26, 111 S.W. 2d 452.

These cases discuss in part the question of residence or non-residence. This problem may not be material but it is observed that one of the appellants, Buck, is a resident of the unincorporated territory of the County of San Diego, while Guerra is a resident of Tijuana, Baja California, Mexico. This does not appear from the printed record but may be shown by examining the complaints printed at Pages 15 and 16 of the record, folio 28 and 30 from which the printed record was prepared.

On the point whether a taxicab driving through a municipality without stopping to pick up or discharge passengers is subject to licensing laws it must first be observed that isolated or rare trips do not constitute doing business and would not be subject to prosecution in any case. *Strickler v. Schaaf*, 199 Wash. 372, 91 P. 2d 1007, 123 A.L.R. 226. The ordinance itself in section 2 (R. 47) refers to "engaged in the business of running, driving or operating one or more taxicabs and carrying passengers in such taxicab or taxicabs for hire within the unincorporated area of the County of San Diego". Casual isolated operations are therefore not in violation of the ordinance.

In an earlier edition McQuillin on Municipal Corporations, Second Edition, Volume 3, page 31, the text stated "A license may be imposed on motor vehicles carrying passengers for hire which pass through the corporate limits as well as upon those which operate within the city". Candor compells the observation that

the cases there cited do not fully support the text statement although they do not hold the contrary. In the subsequent edition, Third Edition, Volume 9, page 423, the text states "Nonresidents operating taxicabs within a municipality have been held subject to licensing regulating and fees, even though they are operating their cabs in interurban as well as intracity business," citing *Commonwealth v. Kelly,* 229 Ky. 722, 17 S.W. 2d 1017, *Fleming v. Wright,* 225 Ky. 129, 7 S.W. 2d 832, *State v. Gamelin,* 111 Vt. 245, 13 Atlantic 2d 204.

A further case on this point is *District of Columbia v. Monumental Motor Tours,* 122 Federal 2d 195, holding that it is not an interference with interstate commerce for local government to impose a nondiscriminatory tax and a regulation upon transitory out-of-state vehicles.

Two cases sustaining the power of local government to regulate activities originating in another political subdivision are:

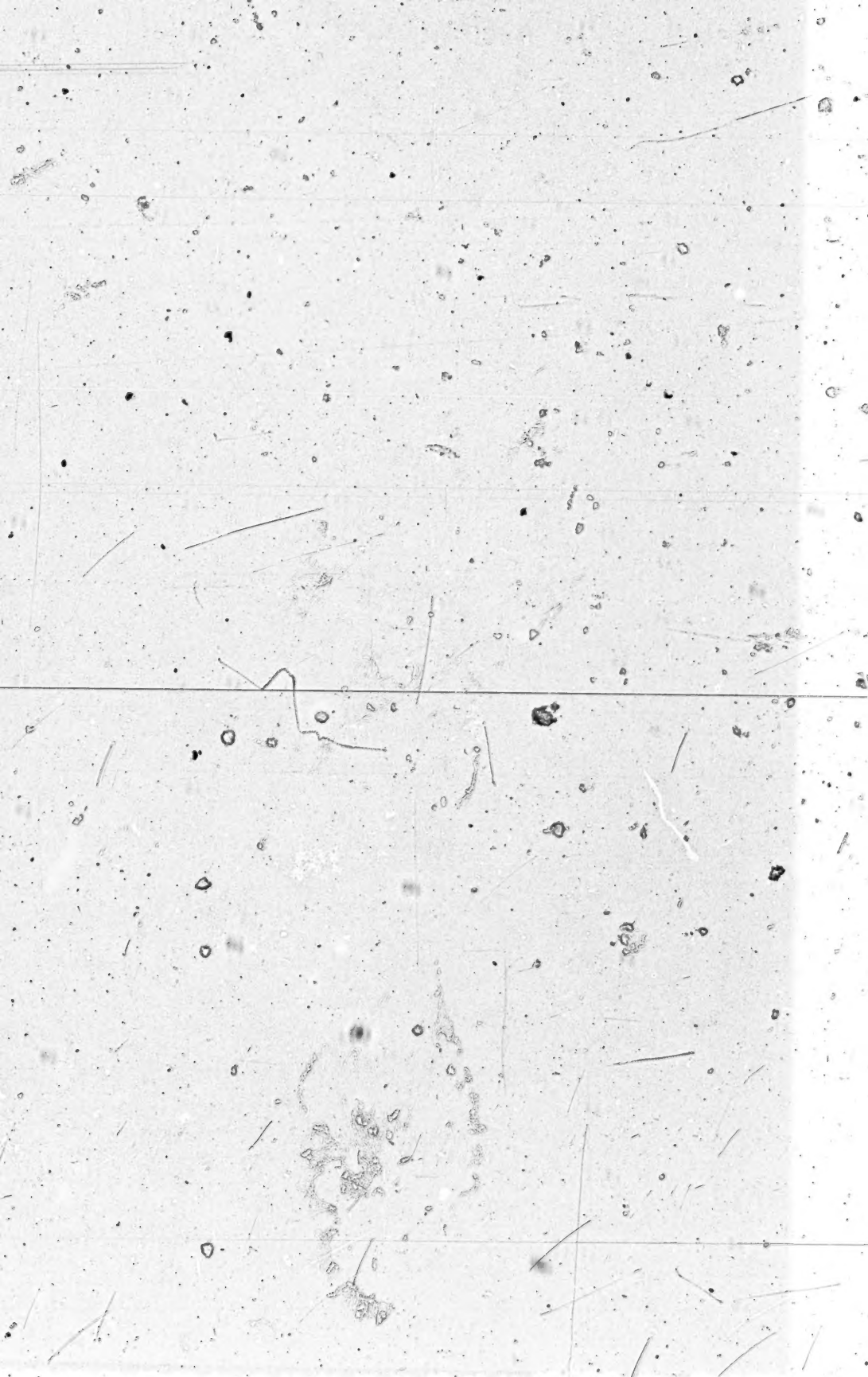
Cleveland R. Co. v. North Olmsted, 130 Ohio St. 144, 198 N.E. 41, 101 A.L.R. 426, and

Bay City Plumbing and Heating Company v. Lind, 235 Mich. 455 209 N.W. 579.

In this last case the city of Bay City, engaged in installing a new water system, authorized by law, was obliged to lay water pipe through Bangor township to reach property owned by the city on the shore of a bay. This was done without the consent of the township, which consent was required by law. Thereupon the township supervisors and the highway commissioner proceeded with due care to remove the pipe. A suit for damages against these township officials was successful in the trial court. This judgment was reversed by the Supreme Court of Michigan and final judgment rendered for the township officials; the court

holding there was no conflict between the law authorizing a municipality to construct a water system within or without its corporate limits and the law requiring the consent of a political unit to the laying of pipe through its territory, "that the city of Bay City had no right to install its water pipe in the township of Bangor without securing from that township its consent," and that the township officials were therefore within their rights "in removing the trespass."

It is also the position of the respondent that these appellants are necessarily, as a matter of law, by reason of their scheme of doing business in violation either of the County Ordinance or, in the alternative, of the State Public Utilities Law. If they are doing a bona fide taxicab business that business requires that they hold themselves up to the public as being willing to accept passengers for whatever destination and over whatever route may be selected and designated by the passengers; that they operate as a common carrier accepting all applications for passage and without any power to limit their business arbitrarily to one destination rather than another. That this is the nature of the taxicab business is demonstrated in *In re Martinez*, 22 Cal. (2d) 259. That case holds that taxicabs not operating between fixed terminals or over a regular route are subject to municipal regulation and not to regulation under the Public Utilities Law. If, on the other hand, the appellants' passengers on the Mexican side of the border engage passage only to designated cities their operation is that of a bus and may be prosecuted under the State Public Utilities Law, as was done successfully in the case of *People v. Stolzoff*, 71 Cal. App. (2d) Supp. 849. The fact that interstate or foreign commerce may be involved does not preclude prosecution for a violation of a state's carrier law if no federal certificate has been obtained. *McDonald v. Thompson*, 305 U. S. 263;



Eicholz v. Public Service Commission, 306 U. S. 268. In general, we believe that this issue is controlled by the following statements in the Stipulated Facts: R. 10, Paragraph II, relates to the taxi-cab business of Buck and Guerra, and the designation of destination by passengers for hire. R. 20-21 shows conclusively that there was a fair hearing as to Guerra before the Board of Supervisors at which hearing his license was revoked; that Buck was charged with violations of valid as well as invalid provisions of the ordinance and failed to appeal to the Board of Supervisors from the action of the Sheriff revoking the license. Neither Buck nor Guerra invoked the right which they undoubtedly have to review the revocation proceedings by mandamus or certiorari in the Superior Court. The right to such review is clearly established by *Greif v. Dullea*, 66 Cal. App. (2d) 986, among other cases. At pp. 1009-1010 the scope of review is outlined.

The judgment as actually signed by Judge Weinberger (R. 24) states in express terms "in all other respects the ordinance is constitutional." It is therefore urged that if appellants contend that the doctrine of res adjudicata or law of the case is applicable, they are now precluded from any effective defense.

As to the points which Judge Weinberger found vulnerable in the ordinance before its amendment, the People and the County did not contend at any time that the Sheriff's attempted regulation was valid. It was only by the amended ordinance enacted after the federal trial that the sheriff was given the authority to promulgate regulations and none of the character referred to in the findings has been promulgated. The former regulation is nowhere involved in the present case. As to the power to revoke or deny licenses, it is first observed that there has been no effort made by defendants under their new applications to secure a hearing before the Board of Supervisors, and of course no appli-

cation to the Superior Court for a review of a denial of a license by the Board of Supervisors.

At the time of the Federal Court trial the ordinance provided:

> "The sheriff may deny the application, or having issued a permit, may revoke the same, if the applicant or taxicab driver is, in the opinion of the sheriff, unfit to drive a taxicab."

The amended ordinance is not merely predicated upon moral character. The present criteria are:

> "The sheriff may deny the application or having issued the permit may revoke the same if the sheriff shall determine that the applicant or taxicab driver is of bad moral character or is guilty of violation of any of the provisions of this ordinance or of any lawful regulation promulgated pursuant thereto or has been convicted of any offense involving moral turpitude."

As previously stated, a hearing before the Board of Supervisors is expressly guaranteed by the ordinance and the case law establishes that the action of the Board of Supervisors may be reviewed by the Superior Court in mandamus or certiorari and the judgment of the Superior Court may be appealed to the State and United States Supreme Courts for final determination.

APPELLANTS HAVE NOT EXHAUSTED THEIR LOCAL ADMINISTRATIVE AND JUDICIAL REMEDIES.

As previously pointed out the ordinance in Sections 4 (R. 47) and 9 (R. 49-50) insures a hearing before the Board of Supervisors, on demand of the interested party, if the Sheriff determines that the applicant or licensee "is of bad moral character or is guilty of violation of any of the provisions of this ordinance or of any lawful regulation promulgated pursuant thereto or has

been convicted of any offense involving moral turpitude." The California courts provide a complete judicial review of such determinations. In Greif v. Dullea, 66 Cal. App. 2d 986, a case which involved a cancellation and revocation of a taxicab license, the nature and scope of the judicial review is discussed at pages 1008 through 1010. The holding may be summarized by the statement that quasi-judicial authority has been conferred by the legislature upon local administrative boards, that in a proceeding in certiorari or mandamus to review such a proceeding the Superior Court may not accept evidence in addition to the record of the local board and may not pass upon the truth or falsity of facts, that the appeal to the court is in the nature of appellate review and not a trial de novo. The same case establishes that after review in the Superior Court an appeal from the decision of the Superior Court to the District Court of Appeals is permitted, after which decision the State Supreme Court may in its discretion grant a hearing. At page 1010 of the decision the concluding sentence shows that the District Court of Appeals denied a rehearing and the Supreme Court of the State of California denied a petition for hearing.

Among the many cases requiring one who has an adequate administrative remedy to invoke it or even to exhaust it is Bradley v. Richmond, 227 U. S. 477, a case involving a criminal prosecution in the hustings court of Richmond for violation of a local licensing ordinance. At page 485 the court said:

> "But it is not necessary to rest our judgment upon the question as to whether the plaintiff in error was rightly or erroneously classified, because we are of opinion that he is not in a situation to complain. There was obviously no want of due process of law in the scheme of the ordinance. The occupations to be subjected to the tax were defined. There

was a maximum and minimum limitation as to the amount of the tax, dependent upon the classification. The classification was to be made after notice and a hearing and an appeal from the final action of the committee was permissible. The plaintiff in error might have appeared and shown the character and extent of the business he was doing, and compared it with that of others more favored in classification. He did nothing of the kind. He seems to have stood by and let the matter of classification go by without contest. It is no answer to say that it would have been unavailing. The presumption is otherwise. The authority to classify was committed primarily to the finance committee, subject to review by the council. It was expected to use its judgment and knowledge. If it erred there was ample opportunity to show that by an appeal to the council. Of the right to appear and to be heard plaintiff in error elected not to avail himself. Under the circumstances he is not warranted in resorting to the extraordinary jurisdiction of this court to arrest an administrative error susceptible of correction by an appeal to the council."

In Lehon v. Atlanta, 242 U. S. 53, a nonresident contended that he was exempt from a local ordinance licensing private detectives. The court said at page 55:

"The only question for our decision is the validity of the law, and of that we have no doubt. Nor are we disposed to take much time in its discussion, notwithstanding the earnest argument of plaintiff in error. The extent of the police power of the state has been too recently explained to need further enunciation. The present case is easily within its principle. It would be very commonplace to say that the exercise of police is one of the necessary activities of govern-

ment and all that pertains to it may be subjected to regulation and surveillance as a precaution against perversion. The Atlanta ordinances do no more. They provide, in effect that all who engage in it or are connected with it as a business shall have the sanction of the state, have the stamp of the state as to fitness and character, take an oath to the state for faithful execution of its duties, and give a bond for their sanction. This the state may do against its own citizens and may do against a citizen of Louisiana, which plaintiff in error is, or against a citizen of any other state.

But the ruling of the local officers in refusing approval of applications of nonresidents of Georgia is urged as a construction of the ordinances or laws of the state, and, it is contended, makes them discriminatory against citizens of other states. Plaintiff in error, however admits he made no effort to comply with the ordinances. The court of appeals, therefore, was of opinion that, whether certain sections of the Penal Code of the state did or did not exclude citizens of other states from engaging as private detectives, plaintiff in error was deprived of no constitutional right, for "as to him the ordinances were not construed at all." In other words, that he had not asserted a right, and, in the absence of assertion, could not have it judicially passed on. We concur in the ruling. It is within the principle of Gundling v. Chicago, 177 U. S. 183, 44 L. ed. 725, 20 Sup. Ct. Rep. 633. "To complain of a ruling, one must be made the victim of it. One cannot invoke, to defeat a law, an apprehension of what might be done under it, and which, if done, might not receive judicial approval."

In Gundling v. Chicago, 177 U. S. 183, the court affirms the power of local government to exercise and delegate discretion in licensing.

A further case bearing upon the requirement of exercise of available remedies is Phyle v. Duffy, 334 U. S. 431, where the court held that the question of the insanity of a prisoner condemned to death should be determined in a state court in a mandamus proceeding which was held to be an adequate local remedy.

CONCLUSION.

In summary it is urged that the reserve police power of a State permits regulation and supervision of local activities of one engaged in interstate or foreign commerce. The right to require a license involving personal fitness is specifically sustained in:

Hendrick v. Maryland, 235 U. S. 610.

Kane v. New Jersey, 242 U. S. 160.

Smith v. Alabama, 124 U. S. 465.

Other regulatory burdens have been sustained as reasonable when applied to interstate commerce

South Carolina Highway Department v. Barnwell Bros., 303 U. S. 177 (width of vehicles)

Clark v. Poor, 274 U. S. 554 (certificate and tax)

H. P. Welch v. New Hampshire, 306 U. S. 79 (hours of duty of employees)

Aero Mayflower Co. v. Board of Railroad Commissioners, 332 U. S. 495 (annual tax for use of highways).

As previously urged the taxicab is inherently local in its activities and its usefulness, and both Congress and the state legislature have recognized it to be such.

In addition to being local, it is an activity which is unquestionably in need of regulation for the protection of the public and is universally agreed to be such.

United States v. Yellow Cab Co., 69 F. Supp. 170.

McQuillin, Municipal Corporations, 3rd Ed., Vol. 9, p. 421, sec. 26.173

37 Am. Jur. 562, sec. 72

60 C. J. S. 254, sec. 79, 80.

It is submitted that the protection of the public of San Diego County requires the regulation of taxicabs and that such regulation reasonably requires that the sheriff be authorized to inquire into the moral character of licensees and to institute revocation proceedings when he finds it necessary. A fair hearing is guaranteed by the California statutes and decisions. Adequate judicial review is provided. The ordinance as enacted and as applied to appellants is fair and reasonable and does not constitute an unwarranted burden on foreign commerce.

Respectfully submitted,

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